TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~310~~ 55.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, TRUSTEE OF CLARA D. BELL, PLAINTIFF IN ERROR,

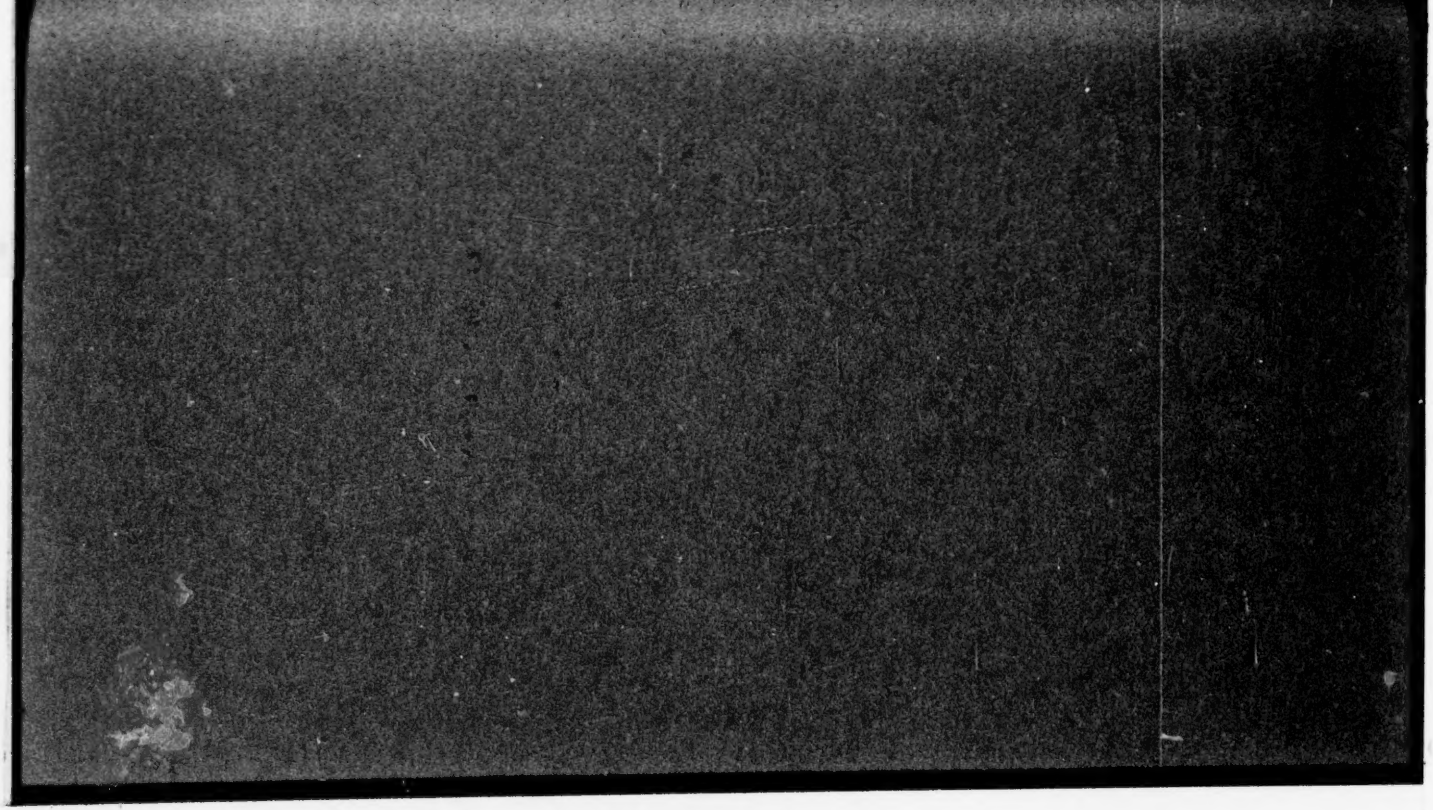
vs.

THE CITY OF LEXINGTON, KENTUCKY, AND E. T. GROSS, DELINQUENT TAX COLLECTOR OF SAID CITY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED JUNE 23, 1905.

(19,812.)



(19,812.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 310.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, TRUSTEE OF CLARA D. BELL, PLAINTIFF IN ERROR,

vs.

THE CITY OF LEXINGTON, KENTUCKY, AND E. T. GROSS, DELINQUENT TAX COLLECTOR OF SAID CITY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from Fayette circuit court	2	1
Parties	2	1
Petition	3	1
Exhibit "A," filed with petition—Ordinance No. 810	20	8
Exhibit "B," filed with petition—Ordinance No. 834	22	10
Return on summons	24	10
Notice filed and motion for injunction entered	24	11
Injunction granted	25	11
Notice of application for injunction	26	11
Injunction bond	27	12
Injunction issued	28	13
Motion to paragraph petition	30	13
Ruling on motion to paragraph	32	14
Demurrer to petition	32	14
Demurrer sustained	33	15
Amended petition and same filed and noted	34	15
Answer, set-off, and counter-claim filed and noted	46	20

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 8, 1906.

	Original.	Print.
Answer, set-off, and counter-claim	46	20
Exhibit "1" with answer—Assessment for 1894	70	30
"2" with answer—Assessment for 1895	71	30
"3" with answer—Assessment for 1896, 1897, and 1898	72	31
"4" with answer—Assessment list	73	32
"5" with answer—Receipts	75	33
"6" with answer—Assessor's list	77	34
"7" with answer—Assessor's list	79	35
"8" with answer—Assessor's list	80	36
Motion to strike from answer	82	37
Demurrer to answer	84	38
Demurrer to answer overruled	84	38
Ruling on motion to strike from answer	85	38
Reply	87	39
Reply noted of record	93	41
Six exhibits filed by Security Trust and Safety Vault Co.	93	42
Appraisement filed as exhibit	94	42
Order filed as exhibit	98	44
Settlement of 1893, filed as exhibit	103	46
Settlement of 1894, filed as exhibit	107	48
Settlement of 1885, filed as exhibit	118	53
Settlement of 1896, filed as exhibit	131	59
Depositions for defendant filed	148	68
Commission to take depositions, &c	149	68
Deposition of Charles L. Vaughn	160	73
Deposition of Charles L. Vaughn (cross-examined)	171	77
Depositions for plaintiff filed	176	80
Deposition of John R. Allen	176	80
Depositions for defendant filed	181	82
Deposition of R. J. O'Mahoney	181	82
Deposition of R. J. O'Mahoney (cross-examined)	183	82
Depositions for plaintiff filed	188	84
Deposition of W. L. Threlkeld	188	84
W. L. Threlkeld (cross-examined)	195	87
W. L. Threlkeld (re-examined)	204	91
W. L. Threlkeld (recross-examined)	206	91
Depositions for defendant filed	208	92
Deposition of P. J. Garland	208	93
Deposition of P. J. Garland (cross-examined)	213	94
Motion to correct order of October 22, 1900	218	96
Plaintiff's exceptions to exhibits and depositions	219	97
Order of October 22, 1900, filing exhibits corrected	220	97
Exceptions to depositions and same filed and noted	221	97
Cause submitted	221	97
Judgment	222	98
Appeal prayed and granted	236	103
Order amending order of November 20, 1902	237	104
Clerk's certificate	238	104
Statement	239	104
Order submitting motion for oral argument	240	105
Order granting motion for oral argument	240	105
Argument	240	105
Agreement as to exhibits	241	105

	Original.	Print.
Exhibits Nos. 6, 7, and 8—Assessor's list	242	106
Judgment	250	110
Opinion	251	110
Order granting time to file petition for rehearing, &c.	266	116
Petition for rehearing	267	117
Order overruling petition for rehearing	283	124
Petition for writ of error	285	124
Allowance of writ of error	286	125
Assignment of error	288	125
Writ of error	292	127
Bond on writ of error	294	128
Citation and service	298	129
Clerk's certificate	299	130

1 Pleas before the Honorable The Court of Appeals of Kentucky, at the Capitol, at Frankfort, on the 22nd day of March, 1905.

CLARA D. BELL'S TRUSTEE, Appellant,
vs.
CITY OF LEXINGTON, ETC., Appellee.

Appeal from the Fayette Circuit Court.

Be it remembered that heretofore towit, on the 6th day of February 1904, the appellant by his attorney filed in the office of the Clerk of the Court of Appeals, a transcript of the record in words and Figures as follows:

2 STATE OF KENTUCKY.

Fayette Circuit Court.

Pleas held before the Hon. Watts Parker, Judge of the Fayette Circuit Court, on the 20th day of November, 1903.

Parties:

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KY., Trustee of Clara D. Bell, Plaintiff,
vs.
THE CITY OF LEXINGTON and E. T. GROSS, Delinquent Tax Collector of said City, Defendants.

Petition in Equity.

3 Be it remembered that heretofore, to-wit: on the 3d. day of February, 1899, the Plaintiff filed a petition in equity against the defendants, which is in words and figures as follows:

Petition.

1. The Plaintiff, The Security Trust and Safety Vault Company, of Lexington, Kentucky, states that it is a corporation, created by an Act of the General Assembly of the Commonwealth of Ky., entitled "An Act to incorporate The Security Trust and Safety Vault Company, of Lexington, Ky.," approved March 16th, 1886, with power to qualify and act as personal representative, guardian and trustee &c., and is the trustee for Clara D. Bell on the trusts declared by the will of the late D. D. Bell.

The Defendant, the City of Lexington is a municipal corporation, classified under the laws of the State as a City of the Second Class, and the Defendant, E. T. Gross, is the Delinquent Tax Collector

for said City, and claims and exercises the right to levy on and sell real and personal property for back taxes due, or claimed to be due to said city.

4 The Plaintiff, as Trustee as aforesaid is the owner and in possession and enjoyment of several valuable adjoining business houses and lots situated on the North East side of *of* Main Street, in the City of Lexington, between Mill and Broadway Streets, fronting about forty (40) feet on Main Street, extending back to an alley, bounded on the South East by the Dudley property and on the North West by the property of the estate of Wm. Campbell, deceased, being known as the "Wilgus Block." Said Gross, as said Tax Collector, asserting a claim for back taxes in favor of said city of Lexington against the said trust estate in the Plaintiff's hands for the sum of $13,964.96, has to satisfy said claim levied on the said real property above described, and has advertised the same to be sold by him at the front door of the Court House on the 6th. day of February 1899, and will so sell said property unless restrained by the orders of this Court. Said claim for back taxes is on account of alleged omissions of personal property only, claimed to have been owned by the said Plaintiff as Trustee, and failed to be assessed for City taxation for the fiscal years 1894, 1895, 1896, 1897, and 1898, and is based on alleged assessments for said back years alleged to have been made by M. C. Foushee, the City Assessor of Lexington.

5 The Plaintiff denies that the said pretended assessments for any of said years were any assessments at all, and alleges that there has been no assessment for the back taxes for any of said years.

The Plaintiff says that in pursuance of the powers conferred by the statutes for the government of Cities of the Second Class authorizing the General Council of said Cities to modify, alter or change the manner of assessments for taxation, the General Council of the City of Lexington passed an ordinance on the 28th. day of March 1896, creating the office of back tax assessor, and by an ordinance in amendment thereof passed June 1st. 1896 further defined the duties of said officer, which ordinances as amended are in full force and effect. (Certified copies of said ordinances are filed herewith as part hereof marked exhibits A and B.) By the terms of said ordinances power is conferred on said back tax assessor to assess all omitted property for the taxes due for preceeding years.

Before the so called assessments were made or attempted D. L. Hardesty was elected and qualified and was acting as such back tax assessor. Whatever be the effect of said ordinances in other respects,

6 it is charged that said odinances superseded and put an end to all pre-existing power of the City Assessor of said City to make assessments for any back taxes unassessed for preceding years, and that his attempted exercise of the said power after the passage of said ordinances was inefficacious and void.

The Plaintiff is informed that said Foushee did make certain entries on the *old* assessor's books for the years 1894, 1895, 1896, 1897, and 1898 of certain items claimed to have been omitted in

the assessments for said years respectively, by interpolating the same among the assessments for said years, without any date to said entries, and without mark to distinguish them from the assessments properly made for said years.

Said old assessor's books were and are public records of the City, long since completed and passed out of the hands or control of the said City assessor, and held by the city custodian as public records of the assessments made, passed on and approved for former years and held only for public inspection, and as evidence alone of the past transactions and assessments therein recorded Said new entries by the said city assessor so made on said books were, Plaintiff avers, improper entries, likely to confuse and destroy the reliability and value of said books as public records, and were not assess-
7 ments or any step in the assessments of back taxes in said years.

Besides these entries so made the Plaintiff is advised and charges that no other assessment- of said back taxes have ever been made.

Par. 2. Plaintiff further says that said entries constituting the only assessment relied on as the basis of the city's claim for said back taxes, were made by authority of said M. C. Foushee on the afternoon of Dec. 31st, 1898, without any notice to or conference with the Plaintiff about his intention to make the same or any assessment. Said pretended assessments were made without any advice or information whatever except such partisan information as was furnished to said Foushee by and on behalf of the back Tax Assessor of said city, who by the terms of the ordinance creating his office, would be entitled to a large contingent compensation therefor, based on a percentage on all the taxes collected by the city in pursuance of said so-called assessments. The Plaintiff, at no time either before or since said pretended assessment, has been given or allowed any opportunity or privilege to make any complaint or show cause against said assessment before any competent or fair tribunal
8 or officer, or before any officer or tribunal whatever. On the contrary on the evening of the day on which said assessment is charged to have been made, and immediately after the same was made, and after business hours of said day, the Defendant Gross, Delinquent Tax Collector, made demand of the Plaintiff's president of the aforesaid sum of $13694.96, claimed to be the back taxes due on account of said assessments, and on refusal of payment by the president under such demand and at such time, immediately on the evening of the same day made the levy aforesaid on the above described property to satisfy and pay said claim.

Par. 3. Plaintiff says that during each of the years covered by said claim for back taxes in due season and in regular manner, it had listed with the City Assessor of Lexington the property held by it as Trustee, and the same had been duly assessed and approved, and payment of all taxes due thereon fully paid, and none of the property pretended to be now assessed for back taxes for said years was omitted in said assessment except as hereafter fully stated. The Plaintiff submits that an enforced collection of taxes based on an

assessment made as above stated would be in violation the con-
9 stitutions, both of Kentucky and of the United States, for-
bidding that a citizen shall be deprived of his property with-
out due process of law.

The items of such entries on the old Assessor's books for the years above mentioned, which are *cal*imed to be assessments of omitted property for said several years are in substance as follows:

For the year 1894, viz:

Value of households goods	$3000.00
Pianos and other musical instruments	500.00
Library	500.00
Horses and live stock	750.00
Carriages and other vehicles	750.00
Value under equalization law	211662.00
Total	$217162.00

For the year 1895, as follows:

Household goods	$3000.00
Library	500.00
Horses and live stock	750.00
Carriages and other vehicles	750.00
Watch	100.00
Pianos and musical instruments	500.00
Diamonds and Jewelry	1000.00
10 Gold and silver plate	1000.00
Stocks in corporations in this State	2300.00
Stock in corporations in other States	80554.00
Mortgages	5100.00
Cash on hand	800.00
Bonds and other credits	114750.00
Total	$211104.00

For 1896, as follows:

Household goods	$3000.00
Pianos and other musical instruments	500.00
Gold and silver plate	1000.00
Diamonds and other jewelry	1100.00
Library	500.00
Horses and other live stock	750.00
Carriages and other vehicles	750.00
Stocks in corporations in this State	1500.00
Stocks in corporations in other States	80554.00
Cash with corporations, &c	2700.00
Bonds, notes, mortgages, &c	134480.00
Total	$226834.00

For 1897, as follows:

	Household goods	$3000.00
11	Pianos and musical instruments	500.00
	Gold and silver plate	1000.00
	Diamonds and jewelry	1100.00
	Library	500.00
	Horses and live stock	750.00
	Carriages and vehicles	750.00
	Stocks in corporations in this State	1500.00
	Stocks in corporations in other States	80554.00
	Cash in bank, &c.	7116.08
	Bonds, notes, &c.	142155.00
	Total	$238925.08

For 1898 as follows:

Diamonds and jewelry	$1100.00
Stocks in corporations in this State	1500.00
Stocks in corporations in other States	80554.00
Cash in Banks, &c.	11028.00
Bonds, notes, mortgages, &c.	120400.00
Total	$214582.00

It is true that there is embraced in the trust estate in Plaintiff's hands certain articles mentioned in said so-called assessments,
12 and should have been assessed for some of said several years, as follows:

Household goods, valued at	$3000.00
Pianos and musical instruments, valued at	500.00
Library, valued at	500.00
Horses and live stock, valued at	750.00
Carriages and vehicles, valued at	750.00
Gold and silver plate, valued at	1000.00

Said Clara Bell has a watch, valued in one of the said years at $100.00, which although her own, and not embraced in the trust, is a proper subject for city taxation. The Plaintiff makes no objection against the valuations placed upon these last named several articles, except it says that the value of the household goods does not and did not during said years in its opinion exceed $2500.00, nor was the library worth more than $200.00, and the horses and live stock worth not more than $400, and the Carriages and other vehicles worth not more than $500.00, and the piano and musical instruments worth not more than $150.00. It is true that these items were omitted from the regular assessment for the years, 1894, 1895, 1896, and 1897, and should have been embraced therein, and were omitted from the lists by mistake and inadvertence, but Plaintiff says
13 that all said articles of omitted property were by the tax officer of the city of Lexington assessed for back taxes for the

years 1894, 1895, 1896, and on account thereof the Plaintiff on 3rd day of February 1897, paid to R. J. O'Mahoney, the Back Tax Collector, for said city, for the year 1894, the sum of $54.60, for the year 1895 $48.75, and for the year 1896 $48.75 in full of said taxes. It is also admitted that said articles by like mistake were omitted from the regular assessment for the year 1897, which was made as of Sept. 15th, 1896, and that on that account the Plaintiff would on a proper assessment on the basis of a tax rate of $1.20 per $100.00 owe the city the sum of $58.20, which sum it here tenders and pays into Court to be paid to the proper officers of the city, as the plaintiff does not know in the absence of a proper assessment what officer is authorized to receive the same. At the same time that the inquiry was made, which resulted in said assessment of said household goods and other property for the years 1894, 1895, and 1896, full exhibition was made to said City officer and his Attorney of the full list of all the securities, cash, bonds, notes, &c., belonging to said trust estate, and said assessing officer and his attorney were fully satisfied of the correctness of the previous assessments of all such property
14 for the preceding years of 1894, 1895, and 1896; and declined to make and did not make any assessments on any property except as stated above, the tax on which assessment as stated above was fully paid to said City's tax collector on the 3rd. day of February 1897, in full settlement of said claims for back taxes. The plaintiff says that neither Clara D. Bell, individually, nor it as trustee for her, owns or possesses any diamonds or jewelry as claimed in said assessments, and says that neither of them has owned any such property at any time during the period covered by said tax claims. The items of Stock in corporations in this State, valued in the assessment for year 1895 at $2300.00, and at $1500.00 for the other years, are stocks in corporations of this State, which are required to pay and do pay taxes on all their property and franchises to the State and to the municipalities, where they have property, and none of said stocks are subject to taxation in the hands of the stock holders. The item embraced in the assessments for each of said years of $80554.00 for stock in foreign corporations is on account of 804 shares of the capital stock of the Western Union Telegraph Company, held and owned by said trustee; which Company is a foreign corporation and is taxed at the home of said corporation, and also has lines and
15 telegraph connection in and through the State of Kentucky, and is required to pay and does pay on all its property and franchises, as fixed by the laws of this Commonwealth, to the State and to the respective municipalities in which it is taxable, and its stock is thereby under the law exempted from taxation in the hands of its shareholders. In addition plaintiff says that the valuation, put upon said stock is excessive, and beyond its market value. Plaintiff says that said stock ought not to be valued at more than $80.00 per share. Neither of said last named items it is submitted is subject under the laws of this state to any taxation, either for State or municipal purposes.

Plaintiff says that none of the items claimed to have been omitted for the said former years under the head of value under the equali-

zation law in 1894, and in the later years under the various heads of cash on hand, or in banks or other corporations, bonds, notes, mortgages, or other heads, covering cash or choses in action, were omitted from assessment for any of the years above specified. All said items were embraced and covered in the assessment for said respective years, were accepted by the City Assessor under his oath of office for said years, and in each of said years the Board of Valuation
16 and Assessment approved of said valuations and assessments.

The items of said property held by plaintiff were regularly made public by the plaintiff's reports to the Court as trustee, and by settlements annually, made with the Court, and spread at large upon the public records of said Court. The plaintiff would if required have submitted to the Assessor for each of said years an itemized list of all bonds, notes, and other securities, subject to taxation, and offered to do so.

Besides as stated above, the City's taxing officer attended by his attorney at law, and adviser, did a short time before the aforesaid payment in Feb. 1897 make a full examination of the property of said trust estate, having before them a full list of all the bonds, notes, mortgages, cash and other choses in action belonging to said trust estate, was satisfied with said former assessment for the years 1894, 1895, and 1896, and approved the same as proper, except as to the items of personal property as above stated. Plaintiff submits that said property cannot now be re-assessed because of any error in the valuation thereof. Said value was fixed by the action of the assessor and the Board of Equalization, and the question of value cannot
17 now be re-opened for a new assessment.

Plaintiff further avers that the said valuation for all of said years was a larger valuation in proportion than the valuation and assessment generally placed on similar property by the Assessor and Board of Equalization serving for said years.

Par. 4. The plaintiff further states that the claim for back taxes on which the said levy was made is on account of an alleged default in the assessment of personalty only, and not of realty. Under the laws governing Cities of the Second Class when taxes due said City become delinquent, which delinquency occurs after they have remained in the hands of the Treasurer of the City beyond the time prescribed for their payment to him, the taxes due and unpaid on personal property are separated from the taxes due on realty, and the former alone are placed in the hands of the Delinquent Tax Collector. Power is not conferred on said Delinquent Tax Collector, and it is submitted that he has no power to levy on real estate for the personalty tax in his hands, and that the levy on real estate, as has been done in this case, is an abuse of the power of said Delinquent Tax Collector and is unauthorized by law. Plaintiff further
18 submits that if said Delinquent Tax Collector is substituted to the power conferred by said act on the Treasurer, that his only right is to sell the tax bills, and not to sell the property itself claimed to be subject to the levy. The plaintiff alleges that the claim for back taxes in controversy is not and never has been delinquent and has never been placed in the hands of the City Treasurer for

payment and collection in the ordinary form, which the plaintiff alleges is necessary before the same can become delinquent.

Plaintiff also says that as said Trustee it has valuable person-property subject to levy and sale on proper claim therefor, situated in the City, which the plaintiff is advised should be exhausted before the levy can be made on the real property.

Plaintiff is therefore advised and charges that the said tax claim and the levy therefor are illegal and void; but that nevertheless unless restrained and enjoined by this Court the defendant, Gross, will make sale of the property levied on as above stated, thereby throwing a cloud on its title thereto, and working an irreparable wrong to the plaintiff. Plaintiff says that the injunction herein sought has never been refused by any Court or officer.

Wherefore plaintiff prays that said tax claim and levy be
19 adjudged to be illegal and void, that the plaintiff be enjoined and restrained from proceeding during the pendency of this action to make sale of the property above described, or from any other proceeding for the enforcement of said illegal tax, and that on final hearing said injunction be made perpetual and plaintiff prays for its costs and for all proper relief.

J. D. & G. R. HUNT,
BRONSTON & ALLEN,
BRECKENRIDGE & SHELBY,
Att'ys.

E. D. Sayre says that he is the President of the Security Trust and Safety Vault Company, of Lexington, Ky., and that he believes all statement- of the foregoing petition to be true.

E. D. SAYRE.

Subscribed and sworn to by E. D. Sayre before me this the 3d day of Feb. 1899.

C. N. MANNING,
Notary Public, Fayette Co., Ky.

Com. expires end next session Ky. Senate.

20 EXHIBIT "A."

Exhibit "A" filed with foregoing Petition is in words and figures as follows, to-wit:

An Ordinance.

No. 810.

Be it ordained by the General Council of the City of Lexington, Ky.

SECTION 1. That the office of Back-Tax Assessor which was in existence prior to March 19th 1894, and which was abolished by an act of the General Assembly of Kentucky, entitled "An Act for the Government of Cities of the Second Class of the Commonwealth," be and the same is hereby recreated and established.

SECTION 2. The General Council shall in joint session, at its first meeting after this ordinance becomes operative, elect a Back-Tax Assessor, who shall hold his office for a Term of two years from the date of his election.

SECTION 3. It shall be the duty of the Back-Tax Assessor to investigate and ascertain if any property subject to taxation in the City of Lexington has been omitted from the Assessment of any previous year or years, or from any other cause has not been
21 placed on the Assessor's books, and report the same to the Assessor, Stating the location, character and value of the same. It shall be the duty of the Assessor to assess the same against the person or persons who should have been assessed with it, if living, if not, against his representative. Said assessment shall be placed in the hands of the Treasurer or Delinquent-Tax Collector for Collection, and may be required by the law and ordinances of the City of Lexington. And it shall also be the duty of the Back-Tax Assessor to ascertain and report all persons who are doing or have done business without license, and report the same to the proper Authority for the Collection of said license.

SECTION 4. The Back-Tax Assessor shall receive thirty-three and one-third (33⅓) per cent. of the net amount of taxes collected by the City of Lexington upon all property discovered as omitted and reported by him to the assessor. He shall also receive for the licenses collected by the City and reported by him twenty-five (25) per cent. for licenses one year due, and for licenses more than one year due, thirty-three and one-third (33⅓) per cent.

SECTION 5. This ordinance shall take effect from and after
22 its passage, approval and publication as required by law.

E. S. HUTCHINSON,
Pres't Board of Councilmen.
B. J. TREACY,
Pres't Board of Aldermen.

Approved Mch. 28th. 1896.

J. B. SIMRALL, *Mayor.*

By the Mayor:

P. J. GARLAND, *City Clerk.*

I hereby certify that the above is a true Copy, as recorded in my office, of Ordinance No. 810.

P. J. GARLAND, *City Clerk.*

Fee $.50 paid by J. D. & G. R. Hunt.

EXHIBIT "B."

Exhibit "B" filed with foregoing Petition is in words and figures as follows, to-wit:

An Ordinance to Amend Ordinance No. 810.

No. 384.

Be it ordained by the General Council of the City of Lexington, Ky.—

SECTION 1. That section 3 of ordinance No. 810, be and the same is hereby amended so that the same shall read as follows:—

It shall be the duty of the Back-Tax Assessor to investigate
23 and ascertain if any property subject to taxation in the City of Lexington has been omitted from the Assessment of any previous year or years, or from any other cause, has not been placed on the Assessor's books, and he shall assess the same against the person or persons who should have been assessed with it, if living, if not, against their representatives. Said assessment shall be placed in the hands of the Treasurer or Delinquent Tax Collector for Collection, as may be required by law and the Ordinances of the City of Lexington. And it shall be the duty of the Back Tax Assessor to ascertain and report all persons who are doing or have done business without license and report the same to the Delinquent tax collector for collection of said licenses.

SECTION 2. This ordinance shall take affect on and after its passage and publication as required by law.

E. L. HUTCHINSON,
Pres't Board of Councilmen.
B. J. TREACY,
Pres't Board of Aldermen.

Approved June 1st. 1896.
J. B. SIMRALL, *Mayor.*
P. J. GARLAND, *City Clerk.*

I hereby certify that the above is a true copy, as recorded in my office, of Ordinance No. 834.

P. J. GARLAND, *City Clerk.*

24 Fee $.50 paid by J. D. & G. R. Hunt.

Upon the filing of the Petition herein summons was issued to the Sheriff of Fayette County and was afterwards returned by said Sheriff endorsed as follows:

Return on Summons.

Executed by delivering Feb. 4th. 1899 on the City of Lexington, by delivering to J. B. Simrall its Mayor, a true copy of the within

summons Feb. 23/'99 by deliv-ing to E. T. Gross, a true copy thereof.

H. M. BOSWORTH, *S. F. C.*,
By BEN FRECKMAN, *D. S.*

And afterwards at a Term of Court held for said Circuit on the 6th. day of February 1899, the following order was entered herein, to-wit:

Notice Filed.

The plaintiff filed notice, service of which was acknowledged by the defendants, and moved the Court in accordance with the prayer of the petition for an order enjoining the Defendants during the continuance of this litigation from selling the property described in the petition or from levying on or selling any other property
25 of the plaintiff or from proceeding in any way to enforce the collection of the tax claim for $13694.66 or any part of it described in the petition; and tendered to Court the sum of Fifty-eight & 20/100 dollars ($58.20) back taxes admitted to be due to the City of Lexington for the year 1897 Said motion having been considered was sustained. But the plaintiff is required before the order of injunction be issued to give bond with approved surety, that the plaintiff will pay to the defendants such damages as they or either of them shall sustain, if it is finally decided that said injunction ought not to have been granted.

Injunction granted.

Thereupon the Plaintiff entered into bond with E. D. Sayre as its surety conditioned as above required. It is therefore ordered that the Defendants the City of Lexington and E. T. Gross the Delinquent Tax Collector of said City be and are hereby enjoined and restrained till the further oeder of this Court from selling the property described in the petition or from levying on and selling any property of said Plaintiff or from any other proceeding for the enforcement of the tax claim as aforesaid. The said sum of Fifty-eight 20/100 dollars tendered and paid into Court is by consent of the defend-
26 ants returned to the Plaintiffs to be held by it subject to this Court's further order.

The notice filed by Plaintiff on February 6th. 1899 is in words and figures as follows, to-wit:

Notice.

The Defendants are hereby notified that on Monday, the 6th. day of February, 1899, at about the hour of nine (9) o'clock, A. M. at the Circuit Court Room, in Lexington, Kentucky, the Plaintiff will move the Fayette Circuit Court to grant to it an order of injunction, restraining the defendants and each of them during the continuance of this litigation from selling the property described in the petition, and also from levying on or selling any other property of plaintiff,

or from taking any other proceeding to enforce the tax claim mentioned in the petition.

J. D. & G. R. HUNT,
BRONSTON & ALLEN,
BRECKINRIDGE & SHELBY, *P. Q.*

Within notice accepted this 3d. February 1899.

GEO. S. SHANKLIN, *Att'y.*
GEO. B. KINKEAD,
City Solicitor.

And afterwards on the 6th. day of February 1899, the
27 Plaintiff executed an Injunction Bond herein which is in words and figures as follows, to-wit:

COMMONWEALTH OF KENTUCKY, *Fayette County.*

Injunction Bond.

Fayette Circuit Court.

FEBRUARY *6th,* 1899.

THE SECURITY TRUST & SAFETY VAULT COMPANY OF LEXINGTON, KY., Trustee of Clara D. Bell, Plaintiff,
versus
THE CITY OF LEXINGTON and E. T. GROSS, Delinquent Tax Collector of Said City, Defendant.

Injunction Bond.

We undertake that the Plaintiff The Security Trust and Safety Vault Company of Lexington, Kentucky, Trustee of Clara D. Bell, shall pay to the Defendants, the City of Lexington, and E. T. Gross, Delinquent Tax Collector of said city, the damages which
28 they may sustain by reason of the injunction in this action, if it — finally decided that said injunction ought not to have been granted.

THE SECURITY TRUST & SAFETY VAULT CO.
OF LEXINGTON, KY., *Trustee of Clara D. Bell,*
By E. D. SAYRE, *Pres't.*
E. D. SAYRE.

JAMES C. ROGERS, *Clerk,*
By J. H. CARTER, JR., *D. C.*

And after the foregoing bond was executed the following Injunction was issued:

Injunction.

The Plaintiff filed notice, service of which was acknowledged by the defendants, and moved the Court in accordance with the prayer of the petition for an order enjoining the defendants during the continuance of this litigation from selling the property described in the petition or from levying or selling any other property of the plaintiff or from proceeding in any way to enforce the collection of the tax claim for $13694.66 or any part of it described in the petition; and tendered to Court the sum of fifty-eight & 20/100 dollars ($58.20) back taxes admitted to be due to the city of Lexington for the year of 1897.

29 Said motion having been considered was sustained. But the Plaintiff is required before the order of injunction be issued to give bond with approved security, that the plaintiff will pay to the defendants such damages as they or either of them shall sustain, if it is finally decided that said injunction ought not to have been granted. Thereupon the plaintiff entered into bond with E. D. Sayre as its surety conditioned as above required. It is therefore ordered that the defendants the City of Lexington and E. T. Gross the Delinquent Tax Collector of said City be and are hereby enjoined and restrained till the further order of this Court from selling the property described in the petition or from levying on and selling any property of said plaintiff or from any other proceeding for the enforcement of the tax claim as aforesaid. The sum of Fifty-eight 20/100 dollars tendered and paid into Court is by consent of the defendants returned to the plaintiff to be held by it subject to this Court's further order.

A copy.
Attest:

JAMES C. ROGERS,
By J. H. CARTER, JR.

30 Executed by Delivering a true copy of the within order to E. T. Gross, Delinquent Tax Collector. Also executed on the City of Lexington, Ky., by delivering to its Mayor J. B. Simrall, a true copy of the within order. Feb. 6th. 1899.

H. M. BOSWORTH, *S. F. C.*,
By FRANK ROGERS, *D. S.*

And afterwards on the 27th day of February 1899, Defendants filed a motion herein, which is in words and figures as follows:

Defendants' Motion to Paragraph.

Defendants move the Court to require Plaintiff to paragraph the first paragraph of its Petition herein, and charges that said alleged paragraph of Plaintiff's Petition should be separated into at least

five distinct paragraphs, as indicated by pencil upon the margin of the original Petition herein.

GEO. B. KINKEAD,
MORTON DARNALL,
GEO. C. WEBB,
GEO. S. SHANKLIN,
Attorneys for Defendants.

31 And afterwards at a term of Court held for said Circuit on the 13th. day of March, 1899 the following order was entered herein to-wit:

This cause is submitted upon defendants motion to require Petition herein to be paragraphed.

And afterwards at a term of Court held for said Circuit on the 17th. day of April, 1903 the following order was entered herein to-wit:

Submitted on Motion to Paragraph.

This cause having been submitted on the motion of the defendants to require the plaintiff to paragraph its petition, and the Court being sufficiently advised, it is ordered that said motion be sustained, to which ruling of the Court the plaintiff excepts, and is given up to and including April 24th., 1899 to comply with said ruling.

And afterwards at a term of Court held for said Circuit on the 24th. day of April, 1899 the following order was entered herein to-wit:

32 *Ruling on Motion to Paragraph.*

In compliance with the order of the Court heretofore entered, but without waiving its exception to said order the plaintiff now comes and by marginal writing and numbers makes three paragraphs numbered 1, 2, and 3 out of the first paragraph as originally filed, and also renumbers as paragraph four, the paragraph originally numbered 2.

And afterwards on the second day of May, 1899, Defendants filed a demurrer herein which is in words and figures as follows, to-wit:

Demurrer to Petition.

1. Defendants, the City of Lexington and E. T. Gross, Delinquent Tax Collector of said City, demurr to the first paragraph of Plaintiff's petition herein, because same does not state facts sufficient to constitute a cause of action against defendants, or either of them.

2. The aforesaid Defendants demurr to the second paragraph of Plaintiff's petition herein, because same does not state facts sufficient to constitute a cause of action against Defendants, or either of them.

3. The aforesaid Defendants demurr to the fourth paragraph of Plaintiff's petition herein, because same does not state facts
33 sufficient to constitute a cause of action against Defendants or either of them.

GEO. B. KINKEAD,
MORTON & DARNALL,
GEO. C. WEBB,
GEO. S. SHANKLIN.
Attorneys for Defendants.

And afterwards at a term of Court held for said Circuit on the 16th day of October 1899, the following order was entered herein to-wit:

Demurrer Sustained.

This cause having been submitted to the Court upon the demurrers of Defendants to the first, second and fourth paragraphs of the plaintiff's petition, and the Court being sufficiently advised, it is ordered that said demurrers be sustained to said paragraphs to which ruling of the Court the Plaintiff objects and excepts, and leave is given the plaintiff to amend its petition herein.

And afterwards at a term of Court held for said Circuit on the 2nd. day of January, 1900 the following order was entered herein to-wit:

34 *Amended Petition Filed and Noted.*

Comes plaintiff and files amended petition herein which is noted.

The amended petition filed and noted herein on the 2nd. day of January, 1900 is in words and figures as follows to-wit:

Amended Petition.

By permission of the Court, the plaintiff, The Security Trust and Safety Vault Company of Lexington, Kentucky, Trustee of Clara D. Bell, for amendment to its original petition says;

That the plaintiff, The Security Trust & Safety Vault Company of Lexington, Kentucky, is a corporation created by an act of the General Assembly of the Commonwealth of Kentucky, entitled, "An Act to incorporate The Security Trust & Safety Vault Company of Lexington, Kentucky," approved March 16th, 1886, with power to qualify and act as personal representative, guardian and trustee, etc., and is the trustee for Clara D. Bell in the trusts declared by the will of the — D. D. Bell;

That it is a citizen of the State of Kentucky and of the United States, and that the *cestui que* trust, Clara D. Bell, is a citizen
35 of the State of Kentucky and of the United States, and that the plaintiff and said Clara D. Bell are entitled to all the privileges, immunities, rights and protection guaranteed by the constitution of the United States, and is entiteld to the equal pro-

tection of the law, and that no property shall be taken from either except by due process of law;

That the defendant, the City of Lexington, is a municipal corporation, classified under the laws of the State of Kentucky, as a City of the second class, and the defendant, E. T. Gross, is the Delinquent Tax Collector for said City, and claims and exercises the right to levy on and sell real and personal property for back taxes due, or claimed to be due, to said City;

That the plaintiff as trustee as aforesaid is the owner and in possession and enjoyment of several valuable adjoining business houses and lots, situated on the Northeast side of Main Street in the City of Lexington, between Mill and Broadway Streets, fronting about Forty (40) feet on Main Street, extending back to an alley, bounded on the Southeast by the Dudley Property, and on the Northwest by the property of the estate of Wm. Campbell, deceased, being known as the "Wilgus Block."

36 That said Gross, as said Tax Collector, asserting a claim for back taxes in favor of said City of Lexington, against the said trust estate in the plaintiff's hands for the sum of $13,964.96, has, to satisfy said claim, levied on the said real property above described, and has advertised the same to be sold by him at the front door of the Court house on the 6th. day of February, 1899, and will so sell said property unless restrained by the orders of this Court. Said claim for back taxes is on account of alleged omissions of personal property only, claimed to have been owned by the said plaintiff as trustee, and failed to be assessed for City taxation for the fiscal years 1894, 1895, 1896, 1897, & 1898, and is based on alleged assessments for the said back years alleged to have been made by M. C. Foushee, the City Assessor of Lexington.

The plaintiff denies that the said pretended assessments for any of said years were any assessments at all, and alleges that there has been no assessment for the back taxes for any of said years.

2. The plaintiff, making the first paragraph of this amended petition part of this paragraph, as if it were written *in ipsissimis verbis* herein, further says:

37 That in pursuance of the powers conferred by the Statutes for the government of cities of the second class, authorizing the General Council of said Cities to modify, alter or change the manner of assessments for taxation, the General Council of the City of Lexington passed an ordinance on the 28th. day of March, 1896, creating the office of back tax assessor, and by an ordinance in amendment thereof passed June 1st., 1896, further defined the duties of said officer, which ordinances as amended are in full force and effect. (Certified copies of said ordinances are filed herewith as part hereof, marked, "Exhibits 'A' and 'B.') By the terms of said ordinances power is conferred on said back tax assessor to assess all omitted property for the taxes due for preceding years.

It says that under said ordinances D. L. Hardesty was elected, qualified and acted as said back tax assessor, and that his election and qualification under said ordinances was prior to the alleged assessment under which the defendant, E. T. Gross, professes to act. It charges that said ordinances supersede and put an end to all the

power of M. C. Foushee as assessor of said City to make assessments for any back taxes unassessed for preceding years, and that
38 any attempt by said Foushee to exercise said power after the passage of said ordinances was inefficacious and void. It says that the alleged assessment under which the defendant, E. T. Gross, intended to act and which was the only authority for said E. T. Gross was attempted to be made by M. C. Foushee, and the plaintiff says that said alleged assessment was inefficacious and void and gave no authority to said Gross to act, and conferred no authority upon the city of Lexington.

3. The plaintiff, repeating all the allegations contained in the first and second paragraphs herein, as if copied in this paragraph, further says;

That under the charter and ordinances of the city of Lexington the assessments of property, personal and real, of the tax payers of said city and annually entered in a book prescribed by law for that purpose, each annual assessment being contained in one book; that after the assessments are made said book is delivered by the assessor to the Board of Council of the City of Lexington and by the City Council delivered to the Treasurer of said City; that when said book is delivered by the assessor *by* the Council of the City of Lexington, the power of the assessor over said book is ended; that it becomes part of the records of said city, passes not only from the cus-
39 tody but from the power and control of said assessor. It avers that the assessor's books for the years 1894, 1895, 1896, and 1897 and 1898 had been delivered by the assessor of said city of Lexington to the said council, and by the said Council had been delivered to the proper collecting officer, and that said assessor had no power over said books, no right to make therein any entry and no power under the ordinances of the city of Lexington and no power to make back tax assessments, delinquent assessments or any assessments of the property omitted from the regular and usual assessments. It is informed that the alleged assessments which were the authority which E. T. Gross pretends to have were entries made by M. C. Foushee under a pretended power in the old assessor's books for the respective years 1894, 1895, 1896, 1897 and 1898; that said entries were not made as of omitted property, not made as delinquent assessments, but were illegally and improperly entered as if they were assessments made during those years and interpolated among the assessments for said years respectively; that said entries were made without any date to either of them, and without any mark to distinguish said entries from the entries properly made for the said respective years. Plaintiff avers that said alleged entries were
40 not assessments, were void, and gave to the City of Lexington no rights and to the defendant, Gross, no power to seize or sell the property of the plaintiff and of its *cestqui que* trust, Clara D. Bell. Plaintiff avers and charges that no other assessments of said back taxes have ever been made, and that the sole authority claimed or possessed by E. T. Gross to make said sales is based upon said void and illegal entries.

4. Plaintiff, repeating all the allegations set out in the first, sec-

ond and third paragraphs of this amended petition, as if said allegations were written herein, further says:

That the entries particularly set out in paragraph third, and which entries are the only authority claimed by the said Gross for his threatened action were made wholly upon the authority of M. C. Foushee's pretended action as assessor of the City of Lexington; that said entries were made without any conference with plaintiff and without any notice to the plaintiff and without the plaintiff having any information that said entries were to be made, or that the said Foushee intended to take any action concerning the property held by the plaintiff as trustee for Clara D. Bell. It overs that said pretended entries were made without any inquiry by said Foushee of this plaintiff, and without any opportunity given to this plaintiff, either before said entries were made or after said entries
41 were made, to make any complaint or to show cause against said assessment before said Foushee as assessor or before any tribunal or officer whatever. Plaintiff says that it has never had any opportunity or privilege to be heard concerning said assessments or concerning the value of the property alleged to have been assessed, nor relating to the fact as to whether said property had been omitted from the proper assessments for the years respectively set out, to-wit: for the years 1894, 1895, 1896, 1897, 1898. It avers that none of the property was omitted from taxation during any of said years, except as set out in paragraph third of its original petition, which paragraph is hereby made part of this paragraph as if written herein. It avers that all of said property except as in said paragraph third set out was duly assessed, and that if it had been given an opportunity to be heard before any competent and legal tribunal it could have established the fact that said property had been legally assessed, and upon it the taxes had been fully and legally paid. It charges that said alleged entries were made after the business hours of the day upon which they were written, and that immediately thereafter, without any notice whatever to this plaintiff or to Clara D. Bell, the defendant, Gross, claiming to act as delinquent tax collector
42 made demand of E. D. Sayre, President of the plaintiff company, for the sum of $13,694.96, claiming that sum to be the back taxes due on the said property alleged to have been thus assessed and demanded immediate payment. It says that this demand was after business hours; that the business house, vault and offices of plaintiff were closed, and that the President had no power by virtue of his office to make said payment and no opportunity to make said payment if he had had such power, and that upon the refusal of the President to then and there make said payment of said sum, immediately, on the evening of the same day said Gross made a levy as set out aforesaid in the first paragraph of this amended petition on the property described therein to satisfy and pay said claim.

Plaintiff says that under the constitution of the United States and the amendments thereto it is entitled to due process of law and it is entitled to equal protection of the law; and it says that under the Constitution of Kentucky it is likewise entitled to these privileges

and protection. It says that the acts of the City of Lexington and of the said Foushee and of the said Gross are violations of the Constitution of the United States and violations of the Constitution of the State of Kentucky and it sets up and relies upon the Constitution of the United States in bar of the action of said City of Lexington and the said named officers, and avers that the said action is void.

43

5. Plaintiff, repeating in this paragraph all the allegations contained in paragraphs 1, 2, 3 and 4 of this amendment and contained in paragraph third of the original petition, as if written fully herein, further says:

That the claim made by the City of Lexington for taxes under the pretended assessments set out in said paragraphs and on account of the pretended levy made by the defendant as set out in said paragraph is on account of an alleged default of an assessment in personalty only and not of realty. Under the laws governing cities of the second class, when taxes due said cities become delinquent, which delinquencies never occur until after the assessments have remained in the hands of the Treasurer of the City beyond the time prescribed for their payment to him, the taxes due and unpaid on personal property were separated from the taxes due on realty. It avers that under the charter and ordinances of the City of Lexington a delinquent tax collector has not the power to levy on real estate for the collection of taxes on personalty; that he has not had conferred upon him the power to levy on real estate or sell real estate for taxes assessed on personalty.

44

It avers that it is the duty of the Treasurer to sell the tax bills, and it avers that if the delinquent tax collector is substituted to the power conferred upon the Treasurer, that his only right is to sell the tax bills, and that he has no right or power to sell the property claimed to be subject to the levy. Plaintiff charges that this pretended assessment and alleged claim for back taxes, is not, and never has been, delinquent; that it has never been placed in the hands of the City Treasurer for payment and collection, which the plaintiff alleges is necessary before the same can become delinquent. It says that as Trustee of said Clara D. Bell it has valuable personal property situated in the City of Lexington subject to levy and sale for taxes, and plaintiff is advised and charges that under the laws of the State of Kentucky, including the charter of the City of Lexington and the ordinances passed therein, that the personal property subject to sale must be exhausted before a levy upon real property. Plaintiff is advised and charges that the said pretended tax claim and the levy made by the said Gross therefor are illegal and void.

Wherefore, Plaintiff prays as in its original petition; that the said tax claim and levy be adjudged to be illegal and void; that the defendant, E. T. Gross, be enjoined and restrained from pro-

45

ceeding during the pendency of this action to make sale of the property herein described and from any other proceeding for the enforcement of said illegal tax; and that on final hearing

said injunction be made perpetual: And it prays for its costs and for all proper relief.

BRONSTON & ALLEN,
J. D. & G. R. HUNT,
BRECKINRIDGE & SHELBY,
Attorneys for Plaintiff.

Joe Clark says he is the President of the Security Trust & Safety Vault Company of Lexington, Kentucky, and he believes the statements of the above amended petition to be true.

JOE CLARK.

Subscribed and sworn to before me by Joe Clark this 2d. day of January, 1900. My commission expires at the close of the present session of the Ky. Senate.

C. N. MANNING,
Notary Public, Fayette Co., Ky.

46 And afterwards at a term of Court held for said Circuit on the 22d. day of January 1900, the following order was entered herein, to-wit:

Answer, Set-off, &c., Filed and Noted.

Comes defendants and file Answer, Set-off and Counterclaim herein, which is noted.

The Answer Set-off and Counterclaim filed and noted herein on the 22d. day of January, 1900, is in words and figures as follows, to-wit:

Answer, Set-off & Counter Claim.

Defendants, The City of Lexington, and E. T. Gross, Delinquent Tax Collector for said City, for answer to the third paragraph of plaintiff's original petition filed herein, deny that during each of the years covered by defendant's claim for back taxes, to-wit: for the years 1894, to 1898 inclusive, or for any of said years, that plaintiff, in the manner required by law, listed with the City of Lexington, the property held by it as trustee of Clara D. Bell, and they deny that for *for* each or any of said years plaintiff, as required by law, gave to the assessor for the City of Lexington, a complete list of the tangible or intangible personal property held by it, with the true cash value thereof, as of the date of the assessment; and defend-
47 ants allege that all of the property except as hereinafter stated, upon which these defendants are claiming taxes as omitted property, was omitted by plaintiff from its assessment list, and they deny that in any of said years plaintiff ever furnished to said assessor of the city of Lexington, or any of the officers of the said city, a list of the property and securities held by it and subject to

taxation, as required by law. The pretended list given by plaintiff for taxation under the oaths of plaintiff's officers, was as follows for the respective years: For the year 1894 "valuation under the equilization law $294000.00" and no other personalty whatever, for the year 1895 the "amount of bonds $300000.00, notes secured by mortgage $2700.00" and no other personalty whatever; for the year 1896 the "amount of bonds, notes, mortgages, and other securities $300000.00" and no other personalty whatever; and for the year 1897 the "amount of notes, bonds, mortgages, and other securities $303000.00" with no other personalty whatever; for the year 1898 "value of house-hold goods $1650.00, pianos and other musical instruments $100.00, gold and silver plate $600.00, library $150.00, horses and other live stock $750.00, carriages, wagons &c, $750.00, amount of bonds, notes, mortgages and other securities, $280000.00."

The original assessments sheets furnished and prepared by plaintiff for the years 1896, 1897, and 1898 are filed herewith as
48 parts hereof, marked "Defendant's Exhibits No-. 6, 7, & 8," respectively. Plaintiff has never at any time exhibited to the Assessor for the City of Lexington, or any other proper officer thereof, the bonds, stocks, secured notes, cash and other investments belonging to said trust estate, nor at any time furnished same with a list thereof, nor at any time informed said officers of what said bonds &c., consisted. Plaintiff made out said imperfect and improper assessment sheet for each of said years, fixing a lumping sum for each year, and listing out all the stocks, bonds, notes, cash and securities held by it and subject to taxation by city of Lexington, only part thereof; omitting from said assessment sheet and from the assessment for taxes for each of said years, a very large part of said personalty as hereinafter set out. That upon the date for the assessment for the year 1894, plaintiff had in its possession subject to taxation, as shown by the inventory and appraisement filed by it in the Fayette County Clerk's office, Book 2, page 536, and by its receipt to the Executrix of D. D. Bell, Fayette Circuit Court, Order Book 75, page 513, the following, to-wit:

5	South Side R'y Cleveland	Value	....	5300.00
24	L. C. & L. 2nd Mortgage	"	....	29760.00
	1 do.	"	....	124.00
49	110 L. C. & L. 1st. Mortgage	Value	....	118800.00
	4 Jm. & I.	"	....	4640.00
30	St. L. & Iron Mountain	"	....	30000.00
10	London O. Water Works	"	....	6500.00
14	L. & N. (Evansville Nash. & Hend.)	"	....	15120.00
84	L. C. & L. 1st Mtge	"	....	89040.00
10	Cin Incline Plane	"	....	10800.00
41	Maysville & Lexington	"	....	41000.00
5	L. & N. Consols	"	....	5500.00
14	Atlanta & Charlotte Air Line	"	....	15680.00
30	Nat Water Works N. Y.	"	....	30000.00
10	Evansville Rockport & East	"	....	10800.00
804	1/10 Share Wester- Union	"	....	80410.00
37	Lex. Opera House	"	....	1950.00

8	Lex. Brick Co.	"	800.00
10	Lex. & Carter Co. M. Co.	"	250.00
16	E. L. & B. S. Stock	"	144.00
	Notes:		
Mary	E. Bell	"	1000.00
John	McClosky	"	1500.00
R. B.	Higgins	"	800.00
	Horses, live stock and carriages	"	1500.00
50	Piano and household goods jewelry &c.	Value....	3500.00
	Cash		6744.90

The total value of personalty held by plaintiff subject to taxation by city of Lexington for 1894 was not less than $510662.90.

That the values fixed above are the values fixed by the Appraisers of the estate from the inventory furnished by plaintiff, and from the value fixed by plaintiff's receipts, and said values are below the value as required by the charter of the city of Lexington, Ky., and that plaintiff, knowing that it held in its possession the above list of personalty, omitted from its assessment sheet a large part thereof, and only gave in for assessment to the city of Lexington, the amounts hereinabove stated: that as shown by the settlements filed by the plaintiff in the Fayette County Clerk's office, to-wit: in books #5, pages 292, 568, and #7, pages 272 and 302, that between the date of the assessment for the year 1894 and the date of the assessment for the year 1895 it sold or collected the following securities:—

M. E.	Bell, part note	$300.00
1	Evansville Nashville & H.	1100.00
61	L. C. & L. Bonds	64100.00
13	Lexington Opera House	700.00

51 and during the same period of time bought the following:—

9	L. C. & L. Bonds	$9540.00
5	Henderson Bridge	5475.00
10	L. & N. Greensburg	5522.50
2	L. & Evansville	2060.00
48	L. E. & St. L.	49080.00
Note	Charles Scott	1800.00
And	at that time cash on hand,	800.00

The value of the assessable property held by plaintiff on date for assessment for year 1895 was not less than $511905.50.

That between the date for assessment for 1895 and the year 1896 plaintiff sold or redeemed the following:

Note	of M. E. Bell, balance	$700.00
8	Lex. Brick Co. Stock	800.00

and purchased the following:—

Note	of J. D. Hume	$3000.00
I. P.	Shelby Note	3050.85
C. S.	Bell, Jr. Note	1000.00
8	L. C. & L. Bonds	8280.00
And	on said date cash on hand	$2700.00

52 The value of all the personalty held by plaintiff and subject to taxation by city of Lexington for the year 1896 was not less than $527,634.65.

That between the date of assessment for the year 1896 and the date of assessment for the year 1897, plaintiff sold or collected the following:—

9 L. C. & L. Bonds	$9203.75
30 Nat. Water Works Bonds	30000.00
I. P. Shelby Note	3056.85
C. S. Bell, Jr. part note	500.00
McClosky part note	500.00

That during said year plaintiff purchased for said estate the following:

M. E. Goodloe Note	$5322.71
E. P. Weathers, bond	5751.18
J. H. Graves Bonds	3029.67
J. Schafer, 3 notes	490.50
W. L. Land Note	8000.00
C. H. Stoll, Note	1000.00
D. C. Collins	16300.00
M. L. & J. W. Sayre, note	5000.00
Evans & Knight, note	3960.00
53 A. N. Warnock	$1500.00
Cash on hand on said date	7116.08

The total value of personalty subject to assessment for the year 1897 and held by plaintiff was not less than $539,624.98.

That during the period extending from the date of assessment for 1897 to the date of assessment for 1898, plaintiff sold or collected the following:

D. C. Collins, Note	$16300.00
McClosky to balance	1000.00
19 L. & C. Bonds	19000.00
1 Nashville (Called) Bond	1100.00
30 St. L. & I. M.	30000.00
26 St. L. & N. W.	26000.00
Proceeds option Incline Plane Bonds	600.00

And that during said period plaintiff invested in taxable property the sum of $48644.64. Upon date of assessment for 1897 plaintiff had cash on hand amounting to $11028.00.

The value of the taxable personalty belonging to said estate as of date of assessment for 1898 was not less than $498,181.54.

54 Defendants say that all of the values fixed in deriving the above sums were values fixed by appraisement and plaintiff's inventory, and the values fixed by the sales made by plaintiff, and that none of said values exceed the true cash value for said property; that for all the years above named plaintiff knowing the values of the

property and securities for taxation as required by law, and omitted from its assessment a large part thereof; and that for the year 1894 plaintiff omitted from its assessment sheet personal property to the amount of $217,762.00, which is more particularly shown in the paper filed herewith as a part hereof marked "Defendants' Exhibit No. 1." For the year 1895 plaintiff omitted from its assessment sheet personal property amounting to $211,104.00 which is more particularly shown by the paper filed herewith as a part hereof, marked "Defendants' Exhibit No. 2." And for the years 1896, 1897 and 1898 plaintiff failed to give in for assessment, and omitted from its assessment sheet personal property for the respective years, as follows: $226,834.00, $238,925.00, and $214,582.00, which is more particularly shown by the paper filed herewith marked "Defendants' Exhibit No. 3."

Defendants allege that all of said omitted property is prop-
55 erly assessable for said respective years by the city of Lexington.

Defendants allege that all of said unassessed property was regularly assessed by M. C. Fouchee, Assessor of the city of Lexington, as provided by Section 6, Art. 8, of the charter for Kentucky Cities of the second class, as shown by the entries made by said Foushee on the Assessor's Books, for said respective years, copies of which have been heretofore filed herewith as defendants' exhibits Nos. 1, 2, and 3. and the entry made in the book kept by the city of Lexington for unassessed or omitted property, a copy of which entry is filed herewith as a part hereof marked "Defendants' Exhibit No. 4," and that under said assessment the total amount due the city of Lexington for taxes, for the years 1894, to 1898 inclusive, at the tax rates fixed by the General Council for the respective years, amount to $13964.96, no part of which has ever been paid to the city of Lexington.

These defendants deny that the enforcement of the collection of said taxes would be in violation of the Constitution of Kentucky and of the United States.

These defendants further allege that the pretended settlement with R. J. O'Mahoney, former back tax collector for the city of Lexington, was only intended to cover household goods and live stock
56 and carriages for the years 1894, 1895 and 1896, and that said settlement did not embrace any unassessed bonds, notes, stocks, securities or cash, and that no assessment of securities of this kind or cash was made by said O'Mahoney; they deny that in the month of February 1897, or at any other time, full exhibition was made to R. J. O'Mahoney, Back Tax Collector of the city of Lexington, or any other officer of the city of Lexington, or to the attorney of any officer of the city of Lexington of a full list or of any list at all of the securities, cash, bonds, notes, &c., belonging to said trust estate, and it denies that any officer of the city of Lexington declined to make an assessment of the property hereinabove alleged to be omitted property; and they deny that the payment made in February 1897 was in full settlement of the claims by the City of Lexington for unassessed property for the years 1894, 1895, and 1896; they deny that the Kentucky corporations in which plaintiff held stock

were required to or did in the years above mentioned pay franchise taxes to the State of Kentucky and to the City of Lexington, and allege that all of said stock was subject to taxation, but was omitted from its assessment sheet by plaintiff, and has never been taxed by the city of Lexington for said years and they deny that plaintiff ever did submit, or offer to submit to any officer of the city of Lexington a complete list of all bonds, and other securities subject to
57 taxation held by it, and deny that the city's taxing officer, or any officer of the city of Lexington, attended by his attorney or otherwise, did make a full and entire examination of the property of said trust in February 1897, or at any other time; and deny that any tax officer of the city of Lexington ever had or made a full list of all the bonds, notes, mortgages, cash and other choses in action belonging to said trust estate.

Defendants alleged that neither the city of Lexington nor any officer thereof, knew of the bonds, notes, &c., that said trust estate consisted of until the examination was made of the inventory, appraisements and receipts and settlements filed by the plaintiff in the Fayette County Court and in the Fayette Circuit Court, which examination revealed the fact that a large portion of the trust estate had been omitted from taxation; these defendants deny that R. J. O'Mahoney together with the tax assessor or any other officer of the city of Lexington, ever approved the tax sheets handed in by plaintiff; defendants further deny that there was any error in the valuation of said trust estate for taxation, and deny that the value fixed in plaintiff's tax sheets and sworn to by it were fixed by the actions of the Assessor of the City of Lexington and the action of the Board of Equalization of said city, and allege that the plaintiff knew full well the value of said securities, and of all said personal property, and did not make any error in the value of the property
58 given in, but did omit a large portion of said property as hereinabove stated from its assessment sheet, and said property has never been heretofore assessed: and these defendants deny that the valuation fixed by said M. C. Foushee upon said omitted property was a larger valuation in proportion that the value of the assessment generally placed upon similar property by the Assessor and the Board of Equalization for the City of Lexington.

These defendants further allege that after making said assessments as above stated, said M. C. Foushee, reporting said assessments to the Auditor of the City of Lexington, and said Auditor, after receiving said report, made out tax bills for the respective years and placed them in the hands of the defendant E. T. Gross, Delinquent Tax Collector, for collection; that thereupon said E. T. Gross presented said tax bills duly receipted by him and countersigned by the Auditor of the City of Lexington, to E. D. Sayre, president of the plaintiff corporation, and demanded payment of said taxes; that plaintiff flatly refused to pay said taxes or any part thereof, and thereupon said E. T. Gross levied upon the property described by plaintiff in its original petition and in the manner prescribed by law, and that said levy was made upon December 31 1898;
59 these defendants allege that by virtue of the assessment od said property the defendants, the city of Lexington has a lien

upon all of said trust property to secure the payment of said taxes, and that by virtue of said levy the said city has a lien upon the property described in plaintiff's petition to secure the payment of said taxes, and defendants make this answer their Set-off and Counter-Claim against the plaintiff.

Wherefore, these defendants pray that the defendant, the city of Lexington, be adjudged to have a first lien upon the property described in plaintiff's petition to satisfy its tax claim of $13964.96, with interest from Dec. 31 1898 until paid; that so much of said property as may be necessary for that purpose be sold, and the proceeds applied in satisfaction of said tax claim, and of the costs of this action; that the injunction heretofore granted herein be dissolved; and for all proper relief.

Paragraph No. 2. Defendants, for answer to the first paragraph of plaintiff's Amended Petition, and repeating all the allegations set out in the first paragraph of this answer, and pleading and relying upon same as fully as if herein copied in full, further says
60 that the assessment for back taxes against the plaintiff under which defendants are undertaking to collect the taxes due the city of Lexington, were regularly and lawfully made, and are valid assessments against the plaintiff, and the trust estate in its hands.

Paragraph No. 3. Defendants for answer to the second paragraph of plaintiff's Amended Petition, and repeating all of the allegations set out in the first and second paragraph of this Answer, and pleading and relying upon same as fully as if copied herein in full, deny that the ordinances passed by the general Council and described in the second paragraph of plaintiff's amended petition supercede and put an end to the powers of M. C. Foushee, assessor for the city of Lexington, to make assessments for back taxes on unassessed property for the preceeding years, and allege that the assessment made by said Foushee was efficacious and valid, and that said assessment was binding upon the plaintiff and the trust estate in its hands; and that the defendants, E. T. Gross, by virtue of his office of Back Tax Collector, was empowered by the laws governing his office to
61 collect the taxes due under said Assessment.

These defendants allege that M. C. Foushee as assessor for the city of Lexington, had full power to make said assessment under the charter of the city of Lexington, which provides

"Whenever the Assessor shall ascertain that there has in any former year or years, been any property omitted which should have been taxed, he shall assess same against the person who should have been assessed with it, if living; if not, his representative."

That said power in said Assessor was a part of the organic laws of the city of Lexington, and was not in any wise abridged by the ordinance referred to in the second paragraph of plaintiff's amended petition, and that the whole effect of said ordinances referred to was to confer upon the back tax assessor, similar and co-ordinate powers, and that the power of assessing omitted property conferred by the charter upon the assessor have never been repealed or abridged.

Paragraph No. 4. These defendants for answer to the third
62 paragraph of plaintiff's amended petition, and repeating all of the allegations contained in the first, second and third para-

graphs of this answer, and pleading and relying upon same as fully as if copied herein, further denies that the Assessor for the city of Lexington delivers the books in which the annual assessments are made to the Board of Council for the City of Lexington, and denies that said assessment books are delivered by the said Council to the Treasurer of the city of Lexington, and they deny that the power of the said Assessor for Lexington, over the annual assessment books is ended with the completion of the assessment for the respective years; and they allege that by the charter of the city of Lexington, that the said M. C. Foushee, Assessor for the city of Lexington, was empowered and directed to make the assessment for the property omitted by the tax payers from their assessments, and that the only books provided by law in which to record said assessments are said assessments books for said respective years, and that the only books provided by law in which assessments for property omitted from the assessments for the years 1894 to 1898 inclusive were the regular assessment books for said respective years; that said M. C. Foushee,

63 the city assessor, after making said assessments, made said entries in said books, a copy of which entries are filed herewith as a part hereof, marked "Defendants' Exhibits Nos. 1, 2, & 3." They allege that said entries were made as of omitted property and as delinquent assessments, and state that said entries were made in the books in which the original assessments for the respective years against the plaintiff were entered, and as close after the entry of said original assessments as the other entries in said books would permit, and that after the name of the tax payer, the word "additional" was written, and that both the original assessment and the assessment for omitted property appear in the same book, and that after each of the entries of assessments for said omitted property said assessor signed his name after the words "Assessed by me" and that none of the regular yearly assessments recorded in said book are so signed by the assessor or any one else; that said assessment was also recorded by said assessor in the back tax assessment book kept by the city of Lexington, and was by him reported to the Auditor of the city of Lexington, on the day said assessment was made.

These defendants allege that said assessment was legally and properly made, and that said assessments are legal and valid.

64 Paragraph No. 5. Defendants for answer to the fourth paragraph of plaintiff's Amended petition filed herein, and repeating all of the allegations set out in the first, second and third and fourth paragraphs of this Answer, and pleading and relying on same as if herein copied in full further allege that the assessments relied on by the defendant Gross in his levy and advertisement for sale, was the assessment made by M. C. Foushee as stated in paragraph 4 hereof, and that said assessment was valid and legal.

These defendants allege that long prior to said assessment, to-wit: more than thirty days prior to said assessment, the defendant, the city of Lexington, through its duly authorized officers and agents, notified the plaintiff that it had omitted from its assessment for the years 1894 to 1898 inclusive, a large portion of the estate held by it

as trustee for Clara Bell, and that said City, through its duly authorized officers and agents, furnished and delivered as a part of said notice, an itemized statement of the securities and other personal property belonging to said estate and held by the plaintiff on the respective dates for taxation for the respective years, together with the values of said property, and the amount thereof omitted
65 by plaintiff from its regular yearly assessment sheet. That the payment- of the taxes upon said omitted property were repeatedly demanded of the plaintiff by the city of Lexington through its legally appointed officers and agents during a period of more than thirty days next and prior to said assessment, and that plaintiff refused to pay any additional taxes, or to list said omitted property, and that the plaintiff was notified long prior to said assessment that unless said taxes for said omitted property were paid, or said property listed by plaintiff the assessment thereof would be made by M. C. Foushee, the regular Assessor of Lexington, and that ample time and opportunity was afforded plaintiff to show whether said property had been omitted or not from said yearly assessments; these defendants deny that any of the property alleged in the first paragraph hereof to have been omitted by plaintiff was ever duly assessed until assessed as omitted property by M. C. Foushee, and deny that plaintiff could ever establish by any tribunal, or can now establish in this Court that any of said property assessed by M. C. Foushee as omitted had been theretofore legally assessed. They allege that the defendant, E. T. Gross, properly elected, qualified, and acting as delinquent tax collector, did demand of the plaintiff, payment of the sum of $13694.96 taxes on said omitted property, by pre-
66 senting said claim to E. D. Sayre, then President and chief officer of plaintiff corporation, and demanded payment thereof as required by law, tendering to plaintiff with said demand a receipted bill for said taxes for each of said years, properly countersigned by L. C. Pearce, Auditor for the city of Lexington; copies of said five receipts are filed herewith as a part hereof marked "Defendant's Exhibit No. 5;" that said corporation did then and there, through its President, flatly decline to pay said sum or any part thereof, then, or at any other time; these defendants further allege that said president was acting under instructions from his corporation, and had full power to make said refusal; these defendants deny that the acts of the city of Lexington, or of said M. C. Foushee, City Assessor, or of said E. T. Gross, delinquent tax collector, or any effort to assess and collect taxes on said omitted property are in violation of the Constitution of the United States, or are in violation of the Constitution of the State of Kentucky, and aver that no constitutional right of plaintiff has been infringed or interfered with by any act of these defendants, or of said M. C. Foushee.

Paragraph No. 6. These defendants for answer to the fifth
67 paragraph of plaintiff's amended petition filed herein, and repeating in this paragraph all the allegations contained in the first, second, third, fourth and fifth paragraphs of this answer, and pleading and relying upon said allegations as if herein fully copied, further say that under the charter and ordinances of the city

of Lexington, the delinquent tax collector has the power to levy on real estate for the collection of taxes on personalty; that said power is expressly conferred upon said delinquent tax collector by section 254 of the revised ordinances for the city of Lexington, Ky. Said Section provides as follows:—

"Said delinquent tax collector is authorized to levy upon any real estate in the city of Lexington owned by a person owing taxes to the city, for the amount of the unpaid taxes of such person in the hands of the collector for collection, and proceed to sell and convey the same, or such part thereof as may be necessary to pay said taxes, in the same manner that Sheriffs are authorized to sell lands under executions of *fieri facias*, but with the right to redeem as provided in the law for the enforcement of collection of State taxes."

That at the time said levy was made by the defendant
68 E. T. Gross upon the property of plaintiff described in its petition herein, said taxes were duly assessed and due the city of Lexington from plaintiff, and that no part thereof had been paid; and that said taxes had been properly placed in the hands of said E. T. Gross for collection, by virtue of the provisions of section 258 of said ordinances, which provides that assessments for omitted property when made, shall be placed in the hands of said E. T. Gross for collection, by virtue of the provisions of section 258 of said ordinances, which provides that assessments for omitted property when made, shall be placed in the hands of the treasurer or delinquent tax collector for collection; and that said E. T. Gross, as delinquent tax collector had the right to levy and sell as above stated; and they deny that said delinquent tax collector is compelled to levy upon personal estate before proceeding upon real estate; and deny that the personal estate must be exhausted before levying upon real estate, under the charter and ordinances for the city of Lexington above quoted, and these defendants aver that the levy made by defendant Gross was legal and valid.

Wherefore, defendants pray that the city of Lexington be adjudged to have a first lien upon the property of plaintiff de-
69 scribed in plaintiff's petition herein to secure the payment of its claim for unpaid taxes amounting to the sum of $13694.96, with interest thereon from the 31st. day of December 1898 until paid, and that so much of said property as may be necessary *to* for that purpose to be sold, and the proceeds applied to the satisfaction of said tax claim, interest and costs herein expended; that these defendants be adjudged to recover their costs herein expended of plaintiff; and having fully answered, they pray to be hence dismissed as to plaintiff's petition, and that the temporary injunction heretofore granted be dissolved; and for all proper relief.

GEO. B. KINKEAD,
MORTON & DARNALL,
GEO. C. WEBB AND
GEO. S. SHANKLIN, *Att'ys.*

Affiant, H. T. Duncan, says that he is the Mayor and chief officer of the City of Lexington, and that the statements of the foregoing petition are true, to the best of his knowledge and belief.

H. T. DUNCAN, *Mayor.*

Subscribed and sworn to before me by H. T. Duncan this 20 day of Jan. 1900.

GEO. S. SHANKLIN,
Notary Public, Fayette Co., Ky.

Commission expires 8 Feby. 1902.

70 EXHIBIT No. "1."

Exhibit No. "1" filed with answer, set-off and Counter-claim herein is in words and figures as follows to-wit:

DEFENDANTS' EXHIBIT No. 1.

Copy of Assessment for Omitted Property Made by M. C. Foushee, Assessor, Year 1894.

Name of Tax Payer, Security Trust & Safety Vault Co., Trustee of Clara Bell.

Additional Assessment.

Value under Equalization Law	$211662.00
Value of Horses	750.00
Value of Vehicles	750.00
Value of Watches	100.00
Value of piano and other musical instruments	500.00
Value of Gold and Silver Plate	1000.00
Value of furniture and housekeeping goods	3000.00
Total	$217762.00

Assessed by me.
(Signed) M. C. FOUSHEE.

71 EXHIBIT No. "2."

Exhibit No. "2" filed with answer, set-off and Counter-Claim herein is in words and figures as follows to-wit:

DEFENDANTS' EXHIBIT No. 2.

Copy of Assessment for Omitted Property Made by M. C. Foushee, Assessor, Year 1895.

Name of Tax Payer, Security Trust & Safety Vault Co., for Clara Bell.

Notes secured by mortgage	$5100.00
Cash on hand	800.00
Amount of credits or money at interest	114750.00
Stocks &c. of Kentucky Corporations	2300.00
Stocks &c. of foreign Corporations	80554.00
Value of Horses	750.00
Value of Carriages	750.00
Value of Watch	100.00
Value of Piano, &c	500.00
Diamonds & Jewelry	1000.00
Household goods	3000.00
72 Value of Library	500.00
Total Valuation of Personalty	$211104.00

Assessed by me.
(Signed) M. C. FOUSHEE.

EXHIBIT No. "3."

Exhibit No. 3. filed with answer, set-off and Counter Claim herein is in words and figures as follows to-wit:

DEFENDANTS' EXHIBIT No. 3.

Copy of Assessment for Omitted Property Made by M. C. Foushee, Assessor, Years 1896, 1897, *and* 1898.

Name of Tax Payer, Security Trust & Safety Vault Co., Trustee of Clara Bell.

Additional Assessment.

	1896.	1897.	1898.
Value of Household Goods...	$3000.00	$3000.00	
Val. Piano & other musical instruments	500.00	500.00	
73			
Val. Gold & Silver Plate....	1000.00	1000.00	
Val. Diamonds & Jewelry....	1100.00	1100.00	1100.00
Value of Library.....	500.00	500.00	

Val. other live stock.....	750.00	750.00	
Value Carriages.....	750.00	750.00	
Amt. Cash on hand on Deposit	2700.00	7116.08	11028.00
Amt. Bonds, Notes, Mortgages and other Securities.....	134480.00	142155.00	120400.00
Amt. Stock of Ky. Corporations	1500.00	1500.00	1500.00
Amt. Stock Foreign Corporations	80554.00	80,554.00	80554.00
Total Value all personalty	$226834.00	238925.00	$214582.00
	Assessed by me M. C. Foushee.	Assessed by me M. C. Foushee.	Assessed by me M. C. Foushee.

EXHIBIT No. "4."

Exhibit No. "4" filed with answer, set-off and Counter-Claim is in words and figures as follows to-wit:

DEFENDANTS' EXHIBIT No. 4.

Assessment List.

74 M.—Security Trust & Safety Vault Co. of Lexington, Ky., Trustee, Clara Bell.

The following property, heretofore unassessed for the years hereinafter named, has been listed in your name for taxation by M. C. Foushee, Assessor for the City of Lexington, this the 31 day of Dec. 1898, in accordance with Sec. 6 Article VIII Charter for Ky. cities second class (Ky. Statutes).

Year.	Kind of Property—Personal Property.	Value.	Assessed.	Not Assessed.	Rate.	Am't Due.
1894	Cash, Mort. Notes, Stocks, Bonds, Horse, Carriages, Diamonds, Household Furniture, Library, &c., Gold & Silverware.....	511.762	294.000	217.762	1.40	3,048.66
1895	"	513.804	302.700	211.104	1.25	2638.80
1896	"	526.834	300.000	226.834	1.25	2835.42
1897	"	541.925	303.000	238.925	1.20	2867.10
'98	"	498.182	283.600	214.582	1.20	2574.98
						13964.96

Attest Copy.
L. E. PEARCE, *Auditor.*

75 EXHIBIT No. "5."

Exhibit No. 5 filed with answer, Set-off and Counter-claim herein is in words and figures as follows to-wit:

This receipt is not valid unless countersigned by Auditor.

LEXINGTON, KY., L——, 189 . No. 1488.

Received from S. T. & S. V. Co., Trustee, Clara Bell Three Thousand and forty-eight & 66/100 Dollars for 1894 taxes 217.762.00 at 1.40.
$3,048.66.

E. T. GROSS,
Delinquent Tax Collector.

(Countersigned) L. E. PEARCE, *Auditor.*

This receipt is not valid unless countersigned by Auditor.

LEXINGTON, KY., ——, 189 . No. 1489.

Received from S. T. & S. V. Co. for Clara Bell Twenty-six Hundred & Thirty-eight & 80/100 Dollars for 1895 taxes. 211.194.00 at 1.25.
$2,638.80.

E. T. GROSS,
Delinquent Tax Collector.

(Countersigned) L. E. PEARCE, *Auditor.*

76 *This receipt is not valid unless countersigned by Auditor.*

LEXINGTON, KY., ——, 189 . No. 1490.

Received from S. T. & S. V. Co. Clara Bell Twenty-eight Hundred & Thirty-four & 42/100 Dollars for 1896 taxes 226.834.00 at 1.25.
$2,835.42.

E. T. GROSS,
Delinquent Tax Collector.

(Countersigned) L. E. PEARCE, *Auditor.*

This receipt is not valid unless countersigned by Auditor.

LEXINGTON, KY., ——, 189 . No. 1491.

Received from S. T. & S. V. Co., Clara Bell Twenty-eight Hundred & Sixty-seven & 10/100 Dollars. For 1897 taxes 238,925.00 at 1.20
$2,867.10.

E. T. GROSS,
Delinquent Tax Collector.

(Countersigned) L. E. PEARCE, *Auditor.*

This receipt is not valid unless countersigned by Auditor.

LEXINGTON, KY., ——, 189 . No. 1492.

77 Received from S. T. & S. V. Co., Clara Bell Twenty-five Hundred & Seventy-four & 98/100 Dollars. For 1898 taxes 214,582.00 at 1.20.
$2,574.98.

E. T. GROSS,
Delinquent Tax Collector.

(Countersigned) L. E. PEARCE, *Auditor.*

The above is correct Copy.
L. E. PEARCE, *Auditor.*

EXHIBIT No. "6."

Exhibit No. 6 filed with answer, Set-off and Counter-Claim herein is in words and figures as follows, to-wit:

Assessor's List.

The Security Trust & Safety Vault Company, of Lexington, Ky.
Of Property held by Trustee Clara D. Bell for 1896.

Real Estate.

78

Street.	Value fixed by Owner.	Value fixed by Assessor.
East Main.	$50,000.00	

Personal Property.

	Value fixed by Person Assessed.	Value fixed by the Assesor.
Amount of Bonds, Notes, Mortgages and other securities	$300,000.	

STATE OF KENTUCKY, *County of Fayette:*

———— who is known —— the Assessor states on oath that the within list of real and personal property is correct, and is owned by ———— in —— own right or as————. That the valuation of said property as of September 15, 1895, is the true and just specie value, to the best of his knowledge and belief.

THE SECURITY TRUST & SAFETY VAULT CO.,
OF LEXINGTON, KY.,
W. L. THRELKELD, *Sec. & Treas.*

Subscribed and sworn to before me this —— day of ———, 1895.

79 EXHIBIT No. "7."

Exhibit No. 7. filed with Answer, Set-off and Counter-Claim herein is in words and figures as follows, to-wit:

Assessor's List.

The Security Trust & Safety Vault Company of Lexington, Ky.
Of Property held by Trustee Clara D. Bell for 1897.

Real Estate.

Street.	Value fixed by Owner.	Value fixed by Assessor.
E. Main.....	45,000.00	
E. Main.....	5,000.00	
Ky. Avenue.....	1,000.00	

Personal Property.

	Value fixed by Person Assessed.	Value fixed by Assessor.
Amount of Bonds, Notes, Mortgages and other securities	303,000	

STATE OF KENTUCKY, *County of Fayette:*

80 *Oath.*

I do solemnly swear that the within is a true and correct list of all real and personal property by me or as agent, subject to taxation, in the City of Lexington, Kentucky, and is a fair cash value to the best of my knowledge and belief, so help me God.

THE SECURITY TRUST & SAFETY VAULT CO.,
OF LEXINGTON, KY.,
Sign this oath.
By W. L. THRELKELD, *Sec. & Treas.*

EXHIBIT No. "8."

Exhibit No. 8. filed with Answer, Set-off and Counter-Claim herein is in words and figures as follows, to-wit:

Assessor's List.

The Security Trust & Safety Vault Company of Lexington, Ky.
Of Property held by Trustee Clara D. Bell for 1898.

Real Estate.

Street.	Value fixed by Owner.	Value fixed by Assessor.
W. Main "Wilgus Block"	25,000	25,000
E. Main Residence.....	45,000	45,000
E. Main Vacant 81 Lots.....	3,000	5,000
Ky. Ave.....		2,500
Total Realty.....	73,000	77,500
Total Personalty.....	283,600	283,600
Total taxable Property...	356,600	361,100

Personal Property.

	Value fixed by Person Assessed.	Value fixed by Assessor.
Value of household goods.	1650.	
Pianos and other musical instruments	100.	
Gold and silver plate....	600.	
Library	150.	
Horses and other live stock	350.	
Carriages, wagons, bicycles and other vehicles	750.	
Amount of Bonds, Notes, Mortgages and other securities	280,000.	
Total of all Personal property	283.600.	

STATE OF KENTUCKY, *County of Fayette.*

82 *Oath.*

I do solemnly swear that the within is a true and correct list of all real and personal property owned by me or as agent, subject to taxation, in the city of Lexington, Ky., and is a fair cash value to the best of my knowledge and belief, so help me God.

THE SECURITY TRUST & SAFETY VAULT CO.,
OF LEXINGTON, KY.,

Sign this Oath.

TRUSTEE CLARA D. BELL,
By W. L. THRELKELD, *Sec. & Treas.*

And afterwards on the 9th day of February, 1900 the plaintiff filed a Motion herein, which is in words and figures as follows, to-wit:

Motion to Strike from Answer, &c.

The plaintiff, The Security Trust & Safety Vault Co., Trustee of Clara D. Bell, moves the Court to strike out the following portions of the answer, set-off and counterclaim of the defendants:

83 1. Beginning on page one two lines from bottom with the words "The pretended lists given in by plaintiff * * * down to and including the words "mortgages and other securities, $280000.00," about the middle of the page, marked 2.

2. Beginning on page 3 at the top thereof with the words "That upon the date of the assessment for the year 1894 * * * down to and including the words "failed and refused to give in all of said securities for taxation as required by law, and omitted from its assessment a large part thereof;" at the middle of page 6 including the whole of pages 3, 4, 5, and about one half of page 6.

3. Beginning with the words "Defendants allege that neither the city of Lexington nor any officer thereof, knew * * * down to and including the words 'which examination revealed the fact that a large portion of the trust estate had been omitted from taxation;" on page 8 of said pleading.

4. The word "flatly" at bottom of page 9. *im* the expression "that plaintiff flatly refused to pay &c."

J. D. & G. HUNT,
BRONSTON & ALLEN,
BRECKINRIDGE & SHELBY, } P. 2.

84 And afterwards on the 9th day of February, 1900, the plaintiff filed a Demurrer herein, which is in words and figures as follows, to-wit:

Demurrer to Answer.

The plaintiff, The Security Trust & Safety Vault Co., of Lexington, Ky., Trustee of Clara D. Bell, demurs to the answer, set-off and counterclaim of the defendants, and to each paragraph thereof, because neither said answer, set-off and counterclaim, nor any paragraph thereof states facts sufficient to constitute any defense to plaintiff's cause of action.

J. D. & G. R. HUNT,
BRONSTON & ALLEN,
BRECKINRIDGE & SHELBY, } P. 2.

And afterwards at a term of Court held for said Circuit on the 2nd. day of July 1900, the following Order was entered herein, to-wit:

Demurrer Overruled.

This cause being heard on the demurrer of the plaintiff to the answer, set-off and counterclaim of the Defendants and to the several paragraphs thereof, it is ordered that said demurrer be and is hereby overruled to which the Pliantiff excepts.

85 *Ruling on Motion to Strike Out.*

The cause being further heard on the plaintiff's Motion entered February 9th 1900 to strike out certain parts of the said Answer set-off and counterclaim, it is ordered that the following parts of said pleading be and are stricken out, viz.:

The following words on the third page "as shown by the inventory and appraisement filed by it in the Fayette County Clerk's Office, Book 2 page 536, and by its receipt to the Executrix of D. D. Bell, Fayette Circuit Court, Order Book 75 page 513." Also the following additional words on said third page are ordered to be and are stricken out, viz.: "That the values fixed above are the values fixed by the appraisers of the estate from the inventory furnished by plaintiff, and from the value fixed by plaintiff- receipts, and said values are below the value as required by the charter of the City of Lexington, Ky., and that."

Also all that part of the pleading on the fourth page thereof beginning near the top of said page with and including the words, "that as shown by the settlements filed by the Plaintiff in the Fayette County Clerk's Office" and ending with the words near the bottom of the page "And on said date cash on hand
86 $2700.00." Except that the words, "The value of all the assessable property held by the Plaintiff on date for assessment for year 1895 was not less than $511905.50" which words are not stricken out.

Also that part of the said pleading beginning at the top of page 5 thereof with the words, "that between the date of assessment for

the year 1896," and ending near the bottom of said page with the words, "Plaintiff had cash on hand amounting to $11028.00."

Also the following words beginning near the top of the 6th page, viz: "that all the values fixed in deriving the above sums, were values fixed by the appraisement and plaintiff's inventory, and the values fixed by the sale made by plaintiff, and."

Also the parts of said pleading beginning near the bottom of the 8th page thereof with the words, "Defendants allege that neither the City of Lexington nor any officer thereof," and ending at the bottom of the page with the words "had been omitted from taxation; these Defendants."

Also the word "flatly" at the bottom of page 9 in the expression "that plaintiff flatly refused to pay."

All the above described parts of the said answer, set-off and counterclaim are ordered to be and are hereby stricken out, to which the Defendants except. The Plaintiff's said motion to strike
87 out other parts of said pleading is overruled to which the plaintiff excepts. The parts of the said pleading which are hereby stricken out are for greater certainty enclosed in pen marks; and on the margin are the words stricken out.

And afterwards on the 1st day of August, 1900, the Plaintiff filed a Reply herein, which is in words and figures as follows, to-wit:

Reply.

The Plaintiff for reply to the answer set-off and counterclaim of the Defendants denies that the property or any of it upon which the defendants are claiming taxes as omitted property was omitted from the assessments by Plaintiff for any of the years in controversy except as stated in the Petition in regard to the tangible property omitted for the years 1894, 1895, and 1896, afterward assessed, and for the year 1897, the facts in regard to which years are set forth in the petition. The Plaintiff denies that it listed only a part of its Bonds, notes, cash, stocks, and securities for the said years in controversy or for any of said years, and denies that it omitted from its assessment sheet or from its assessment for all or any of said years any part of said personalty. Plaintiff denies that it had in its hands as Trustee or in its control all the property alleged in the
88 answer &c. It denies that the 804 1/10 shares of Western Union Telegraph Stock, or the 37 shares of Lexington Opera House stock, or the 8 shares of Lexington Brick Company stock, or the 10 shares of Lexington & Carter County Mining Company Stock, or the 16 shares of the E. L. & B. S. R. R. Stock were subject at all to taxation in the hands of said Trustee or other owner. And besides it alleges that the said stocks and also the other bonds notes &c., set forth in the answer are not properly valued therein, but says that at the time of assessment they were worth less than is stated in the answer &c. and much less than the sum of $510662.90 as alleged therein. It denies that the value of the assessable property at the date *for* the assessment for 1895 was worth as much as

$511905.50/100; or that the value for 1896 was as much as $527634.65/100; or for 1897 was worth as much as $537624.98; or for 1898 as much as $498181.54. It denies that for any of said years the cash values of the securities and assets held by the plaintiff and subject to taxation were as much as the sums named. Plaintiff denies that for any of said years it failed or refused to give in for taxation any property owned by it as trustee except as to the articles of tangible property omitted from the assessments for 1894, 1895, and 1896, and 1897, the facts with regard to which were fully stated in the petition.

89 It says also that the above stocks in incorporated companies in and out of the State are intended by the Defendants to be embraced in the claim against the plaintiff for all said years, and that none of them was or is taxable; and besides they are in the claims of the defendants as set forth in their answer largely overvalued.

The plaintiff is advised that the question whether said stocks, bonds, notes and other securities, which constitute the basis of the defendants' claim for back taxes were or not properly valued or were undervalued by the assessing officers for the City for the respective years in which the assessments were regularly made, cannot now be reopened or reviewed by this Court or any other tribunal.

It denies that any of said roperty was concealed from said officers or that any of it was omitted from the assessments for any of said years; and submits as matter of law that the conclusions as to value by the regular assessing officers of the city was alike binding and conclusive on the city and the tax payer and cannot now be reopened in any form.

It denies that the fact and manner of said assessment as stated in its petition and amended petition are incorrect in any respect.

90 The Plaintiff denies that all or any of said property referred to in the answer &c. was properly or regularly assessed for the back taxes claimed by said M. C. Foushee, assessor or any other person.

It denies that entries thereof were made in any book kept by the City of Lexington for unassessed property or omitted property.

It is informed and charges that the city at the time of such pretended entries did not keep any book for such purpose. It denies that the entries or pretended assessments were made otherwise than as stated in the petition and amended petition. It again denies that it omitted a large part or any part of its said property, which is the basis of this action from assessment for any of said years. Plaintiff again denies that in the time or manner of the assessment or in the time or manner of presentation of said demands to the plaintiff the facts are in any respect different from the allegations of the petition and amended petition herein.

For further reply to the second, third, fourth, fifth, and sixth paragraphs of said answer, set-off &c., the plaintiff submits that the matters therein alleged for the most part are merely matters of law, on which the judgment of the Court is asked and such allegations

91 as relate to matters of fact are wholly irrelevant and impertinent.

It again denies that any of the assessment relied on by the defendants is legal or efficacious for any purpose, and submits that they were not made in a legal or proper manner or by any officer authorized to make the same. They deny that said M. C. Foushee had any right or authority to do so or that E. T. Gross, Back Tax Collector had any right to proceed to the collection or to make any levy therefor.

The plaintiff has no knowledge or information sufficient to form a belief that the alleged assessment relied on by the Defendants was ever recorded in the Back Tax Assessment book kept by the City of Lexington or that there is any such book kept by said city.

They deny that M. C. Foushee, the Assessor of the City of Lexington either himself or by deputy ever prior to said assessment made any claim against the plaintiff as trustee for any of the back taxes, alleged to be due from it. Certain persons claiming authority therefor, but not said assessor, did about that time claim that certain taxes were due to said city, and did present to the plaintiff a statement of said claim; but said statement was not the same, but materially different from the items included in the alleged assessment.

92 Plaintiff denies that at the time the levy complained of was made by the defendant, Gross, that the taxes claimed were duly or properly assessed or were due from plaintiff to the City of Lexington.

Plaintiff denies that said taxes were properly placed in the hands of said Gross for collection by virtue of Section 258 of the city ordinances or by virtue of any other ordinance or law, and denies that the levy made by said Gross was or is legal or valid.

Wherefore plaintiff prays as in its petition and amended petition.

J. D. & G. R. HUNT,
BRECKINRIDGE & SHELBY,
BRONSTON & ALLEN,
} P. 2.

Joe Clark states that he is President of the Security Trust & Safety Vault Co. of Lexington, Ky., and that the statements of the foregoing reply are true as he verily believes.

JOE CLARK.

Subscribed and sworn to by Joe Clark before me this 1st day of Aug. 1900.

D. G. FALCONER,
Notary Public.

93 And afterwards at a term of Court held for said Circuit the following order was entered herein to-wit:

Reply Noted.

The reply of Plaintiff heretofore filed in the office of the Clerk of this Court on Aug. 1, 1900, is now noted of record.

And afterwards at a term of Court held for said Circuit on the 22nd day of October, 1900, the following order was entered herein, to-wit:

Six Exhibits Filed Sec. T. & S. V. Co.

The Security Trust & Safety Vault Company Trustee &c. files six exhibits herein, which are noted.

The appraisement filed Security Trust & S. V. Co. as "Exhibit" on Oct. 22, 1900, is in words and figures as follows, to-wit:—

94 *Appraisement Filed as Exhibit by Sec. T. & S. V. Co.*

We, the undersigned, appraisers, appointed by the Fayette County Court, to appraise the personal property of D. D. Bell, deceased, after being first duly sworn, proceeded on the 11th day of February, 1893, to discharge said duty, and did appraise the property not exempt from distribution, exhibited to us by Mrs. Sydney S. Bell, the personal representative, described and valued as follows, viz:

84 L. C. & L. R. Bonds 1st mortg. $1000 ea. at 1.06....	89.040
38 " " " 2nd " " " 1.24....	46.120
1 " " " " " " " $100....	.124
14 Louisville & Nashville R. R. 1st. mortg. $1000 ea. at	15.120
10 Cincinnati Inclined Plane R. R. mortg. $1000 ea. at 1.08	10.800
10 London Ohio Waterworks 1st mort. $1000 ea. at .65.	6.500
5 South Side R. R. Cleveland R 1st mort. $1000 ea. at 1.06	5.300
4 J. M. & I. R. R. Bonds $1000 ea. at 1.06.....	4.640
10 Evansville Henderson Rockport R. R. $1000 ea. at 1.06	10.800
5 L. & W. R. R. causes $1000 ea. at 1.06.....	5.500
14 Atlantic & Charlotte Air Line Bonds $1000 ea. at 1.06	15.680
775 Shs Bank of Kentucky at $100 ea. at 1.67.....	129.425
516 Shs Northern Bank Kentucky ea. at 1.24..	63.984
95 35 Shs Bank of America N. Y. ($100. Shares) ea. at 2.10.....	7.350
11 Shs Merchants National Bank St. Louis Mo. ea at 1.36	1.496
10 Shs Third National Bank St. Louis Mo. ea. at —...	1.220
$40000.00 4% U. S. Bonds 4% (4 Bonds of $10000.00 ea)	45.200
40 Shares Security Trust & Safety Vault Co. ea. at 1.65	6.600
10 Shares Phœnix Nat. Bank, Lexington, Ky. ea at 1.60	1.600
1 Share Ky. Association Stock ($50).....	35
Forward	466.534

1 Share	Ky. Association Stock ($1.500)	.900
39	" Lexington Opera House Stock $100 ea	1.950
1	" Ellerslie Fishing Club 25	10
1	" Kentucky Chauta-qua Assembly $100	50
8	" Lexington Brick Company $100	800
1	" Latonia Agricult Assoc. $100	50
10	" Lexington & Carter Co. Ming Co. $100	250
$100000.00	Louisville & Nashville R. R. Bonds in hands of Morton Bliss & Co. N. Y. at $1.08 as per their receipt dates April 3, 1889	118.800
16 Shs	Elizabethtown & Lex. & Big Sandy R. R. Stock $100	.144
Note	Mrs. Mary E. Bell	1.000
	Cash D. A. Sayre & Co.,	4.438.94
96	Cash Northern Bank Ky	.834.14
	" Morton Bliss & Co. N. Y	34.105.78
	" Bank of America N. Y	.354.52
	One pair carriage horses	.500
	Lucy Lumps (mare)	.150
	Bay Colt	50
	" Filly (2 years old)	.175
	Royal Wilkes	.900
	Total amount of appraisement	$631.996.38

Given under our hand, this 11th day of February, 1893.

J. H. SHROPSHIRE,
S. BASSETT,
JOHN M. BELL,
Appraisers.

I, Sydney S. Bell, as the personal representative of the late D. D. Bell deceased, of Fayette County, Kentucky, do certify that the foregoing two pages of the Inventory and Appraisement of the personal estate of said decedent is a true and full Inventory of said estate, which came to my hand as Executrix, this 13th day of February, 1893.

SYDNEY S. BELL,
Ext. of D. D. Bell.

STATE OF KENTUCKY, *Fayette County, Sct.:*

97 I, Theo. Lewis, Clerk of the County Court, for the County aforesaid, do certify that the foregoing Inventory and Appraisement was on this day returned to me in my office and ordered to be recorded, whereupon the same, together with the certificates thereon endorsed, and this certificate have been duly recorded in my office.

Given under my hand, this 13th. day of February, 1893.

THEO. LEWIS, *Clerk.*
By J. B. GORHAM, *D. C.*

A Copy attest Claude Chinn C. F. C. C.

Copy of Order filed by Security Trust & Safety Vault Co., as Exhibit on October 22nd, 1900, is in words and figures as follows, to-wit:—

98 *Order Filed as Exhibit by Sec. T. & S. V. Co.*

Fayette Circuit Court, January 6th, 1894.

D. D. Bell's E'xrx, Plaintiff,
vs.
Clara D. Bell, etc., Defendants.

Order.

The Security Trust & Safety Vault Company, of Lexington, Kentucky, appeared in Court by W. L. Threlkeld, its Secretary and Manager, and acknowledged receipt by said Company as the Trustee of Clara D. Bell, from the plaintiff, of the following stocks, bonds and securities, to-wit:—

Ten (10) Bonds of $1000.00 each of the Evansville, Rockport & Eastern Railway Company, with Coupons attached from January 1894 until maturity;

Ten (10) Bonds $1000.00 each of Cincinnati Incline Plane Railroad Company, with Coupons including January 1894;

Eighty-four (84) L. C. & L. R. R. 1st. Mortgage Bonds $1000. each with Coupons including January 1894;

Forty-one (41) Maysville & Lexington Railway Company Bonds $1000 each with Coupons including January, 1894;

99 Thirty (30) National Waterworks Company of New York Bonds $1000. each with all Coupons including February 1894;

Five (5) Southside Street Railway Company Cleveland, Ohio, Bonds $1000. each with all Coupons including September, 1893;

Four (4) Jeffersonville, Madison & Indianapolis Railroad Company 1st. Mortgage Bonds $1000. each with all Coupons including October 1893;

Five (5) Louisville & Nashville 1st. Mortgage Bonds $1000. each with all Coupons including October 1893;

Twenty-four (24) L. C. & L. R. R. Co. 2nd. Mortgage Bonds $1000. each and

One (1) $100 Bond, same Co. and series, with all Coupons including October 1893;

One Hundred and ten (110) Louisville & Nashville 1st. Mortgage Bonds $1000. each, with all Coupons including October, 1893;

Thirty (30) St. Louis & Iron Mountain Railway Company Bonds $1000. each, with all Coupons including November 1893;

Fourteen (14) Louisville & Nashville R. R. Bonds (Evansville, Henderson & Nashville Division) $1000. each, with all Coupons including December 1893;

Ten (10) London Waterworks Company Bonds $1000.
100 each with Coupons including December 1893;

Also Forty thousand dollars ($40,000.00) in four per cent. Bonds of the United States Consols;

Fourteen (14) Bonds $1000. each of Atlantic & Charlotte Air Line registered in D. Davis Bell;

Also 73 10/100 Shares of the Capital Stock of the Western Union Telegraph Company;

Ten (10) Shares of the stock of the Third National Bank of St. Louis, Missouri;

Eleven (11) shares of the stock of the Merchants National Bank of St. Louis, Missouri;

Five hundred and sixteen (516) shares of the stock of the Northern Bank of Kentucky;

Seven hundred and thirty-one (731) shares of the stock of the Western Union Telegraph Company (at Morton, Bliss & Co.);

Also one share of the old Kentucky Association Stock; also one (1) share of the New Kentucky Association Stock; par value $1500.

One (1) share of the stock of the Latonia Agricultural Association;

Thirty-seven (37) shares of the Capital Stock of the Lexington Opera House;

Eight (8) shares of the stock of the Lexington Brick Company;

Ten (10) shares of the Stock of the Lexington & Carter
101 County Mining company;

One share of the stock of the Kentucky Chauta-qua Assembly;

Sixteen (16) Shares of the Capital Stock of the Elizabethtown, Lexington & Big Sandy Railway Company;

Note of Mary E. and John M. Bell to D. D. Bell, dated May 16th, 1891, for $1000. due two years after date, interest six per cent. from date, payable semiannually;

Also the note of John McClosky, dated February 2nd, 1893, for Fifteen hundred dollars ($1500.) with interest at the rate of six per cent. per annum from date, given as deferred payment on a lot sold by said executrix;

Also two (2) notes of R. B. Higgins, both dated January 9th, 1893, each for the sum of Four hundred dollars ($400) with interest from date, due in one and two years respectively, being the deferred payments for a farm in the State of Arkansas sold and conveyed by said executrix.

Said Company also acknowledged payment to it as said Trustee by said plaintiff Sidney S. Bell as Executrix of the sum of Six thousand seven hundred and forty-four & 90/100 dollars ($6744.90) in cash, the whole amount in her hands as Executrix after the payment of the costs as directed by the order entered herein on the 30th day
102 of November, 1893—And it appearing that Sidney S. Bell as Executrix has fully complied with said order and has delivered and paid to the said Trustee of Clara D. Bell all the Bonds, stocks, securities, cash and assets in her hands as Executrix; it is now therefore ordered that said Security Trust & Safety Vault Company as Trustee of said Clara D. Bell pay to Ed Frazer the Sheriff of Fayette County the sum of Twenty-four hundred and eighty-seven & 20/100 dollars ($2487.20) and to S. G. Sharp City Collector of the City of Lexington the sum of thirty-nine hundred and sixty-five dollars ($3965.00) which sum was adjudged to be due for back

taxes to the State, County and City and was ordered to be paid by the Executrix of D. D. Bell by order entered the 2nd day of January 1894. Said order of January 2nd 1894 is so modified as to direct the payment of said sums by said Trust Company as Trustee and to exonerate said Sidney S. Bell as Executrix therefrom. Said Sidney S. Bell as Executrix having fully accounted for the estate of D. D. Bell in her hands, this cause is filed away.

A copy,
Attest: JAMES C. ROGERS, *C. F. C. C.*,
By J. H. CARTER, JR., *D. C.*

103 The Settlement filed by Security Trust & S. V. Co. as an Exhibit herein on the 22nd day of October, 1900, is in words and figures as follows, to-wit:

Settlement Filed Sec. T. & S. V. Co. as Exhibit.

CLARA D. BELL.

1893			Ex.	Inv. made
Jan.	13	Purchase 10 Shrs. Security T. S. & V. Co.	....	1.600
Aug.	4	(1) Sidney S. Bell	500	
	19	(2) Express	11.85	
	23	(3) "	.41	
	25	(4) "	12.	
Sept.	1	(5) R. H. Courtney	7.	
	7	(6) Sidney S. Bell	1100	
	16	(7) Express on W. U. Stock	.80	
	22	(8) W. King *A* Son	16.	
		(9) James C. Rogers C. F. C. C.	2.50	
	23	(10) Express on L. C. & L. Bonds	44.	
		(11) Morton Bliss & Co	100.	
Oct.	3	(12) City Taxes 1893	4180.	
	6	(13) Glass & Farra	6.	
104				
Oct.	9	(14) Sidney S. Bell	800.	
	27	(15) State & Co. Taxes 1893	2345.76	
Nov.	6	(16) Express charges on Bonds	1.55	
		(17) Exchange	.65	
	20	(18) Sidney S. Bell	800.	
	29	(19) W. H. Stewart's Sons	1072.55	
Dec.	9	(20) Sidney S. Bell	800.	
1894				
Jan.	3	(21) Same	800.	
	6	(22) Ed Frazer Sheriff	2487.20	
		(23) S. G. Sharp C. C.	3965.	
	9	(24) W. King & Son	78.	
	12	(25) Theo. Lewis C. F. C. C.	12.50	
Feb.	5	(26) Sidney S. Bell	800.	
	16	(27) Glass & Farra	70.	
	26	Purchase 3 L. C. & L. Bonds at 105½	....	3.165
		(28) Accrued interest on same	32.67	

	28	Purchase L. C. & L. Bonds at 105½	....	1.055
		Accrued interest on same	11.65	
Mar.	6	(29) Theo Lewis C. F. C. C.	4.25	
		(30) Same	2.	
		(31) Sidney S. Bell	800.	

105

			Ex.	Inv. made	Pri. Pd.
Mar.	15	Purchase 3 L. C. & L. Bonds	....	3.165	
		Accrued interest on same	43.75		
		Purchase I. L. C. & L. Bond	....	1.055	
		Accrued interest on same	14.58		
	21	(32) Willa Wiley Commission	....	....	30.00
		Amts. forward	20.931.67	10.040	30.00

1893			Income.	Prin. Rcd.
Jan.	31	Amount received from Sidney S. Bell Ex. D. D. Bell, Dec.	....	1.600
June	13	1/3 net proceeds of farm at Booneville, Ky.	....	1.600.07
July	11	Dividend 10 Shares S. T. & S. V. Co.	30.	
Aug.	25	5 Coupons Southside St. Ry. Co.	150.	
Oct.	2	Quarterly Int. on 40 U. S. 4% Bonds, $100 ea.	400.	
	3	24 L. C. & L. 2nd mort. Bond Coupons	840.	
		Same	3.50	
		5 L. & R. St. mort. Bonds	175.	
		110 Shares	3.850.	
		4 J. M. & I.	140.	
	14	Part payment note John M. Bell	....	300.
		Int. on same	152.	
	21	30 St. Louis & Iron R. R. Coupons	1.050.	

106

1893			Ex.	Inv. made
Oct.	30	Dividend 804 shares W. Union Tel. Co.	1.005.	
Nov.	23	Rec'd from Sidney S. Bell Ex. D. D. Bell, dec.	....	6.744.90
Dec.	9	The Merchants Nat. Bank of St. Louis Div. 49	33.	
	18	10 Coupons the London Water Works Co.	250.	
		14 Coupons L. & N. R. R. Co.	420.	
	30	Payment Evansville, Nashville & Hudson Called Bond #1032 $1000. Premium $100.	....	1.100.
1894				
Jan.	2	Div. Northern Bank	1.548	
		Quarterly Div. on 40 U. S. 4% Bonds	400	
	5	84 L. C. & L. Coupons	2.900	
	9	10 Cinti. Incline Plane Ry. Co. Coupons	300	
	12	Div. 10 Shares S. T. & S. V. Co.	30	
		41 Maysville & Lexington Coupons	1.435	
		14 Atlanta & Charlotte R. R. Co.	490	
		804 Western Union Tel. Co. Int.	1.005	
		Latonia Jockey Club Div. 1893 & 1894	12	
Feb.	2	Int. on McClosky note	90	
	8	30 Coupons Nat. Water Works of N. Y.	900	

Mar.	1	Div. Lex. Brick Co	48	
		3rd. National Bank of St. Louis	15	
	13	5 Coupons South Side St. Ry. Co	150	
	21	Cash payment on lot Cor. Main St. & Ky. Ave	50	
		Amounts forward	17.861.50	11.424.97

107

1894			Ex.	Inv. made	Prin. Pd.
Mch.	23	Amounts forward	20.931.67	10.040	$30.00
		Purchase 3 Henderson Bridge Bonds at 109½	....	3.285	
		Accrued Int. on same	11		
	26	(33) Collection fee	.80		
	31	(34) Express & charges on L. C. & L. Bonds, Par value $500.00 each	305.		
Apr.	5	Purchase 9 L. & W. Greensburg Branch at 106	....	4.470	
		Accrued Int. on same	28		
	10	(35) Sidney S. Bell	800		
		(36) Wilson & Bro	2		
Apr.	12	Purchase 2 Henderson Bridge Bonds	....	2.190	
		Accrued Int. on same	13		
		(37) Express &c. on same	1.05		
	19	(38) W. King & Co	20.		
	27	(39) J. S. Fishback	11.35		
May	8	(40) Sidney S. Bell	1.133.33		

108

		(41) T. T. Skillman	12.00	
		(42) Telegram & Express on Bonds.	1.45	
		Purchase I. L. & N. Greensburg Branch	....	1.052.50
		Accrued Int. on same	12.83	
	11	(43) Express	1.25	
		(44) Same	1.70	
		(45) Int. on over draft	9.20	
		Purchase 2 Louisville, Evansville & St. L. Bond-	....	2.060
		Accrued Int. on same	13.	
	18	(46) M. G. Thompson	26.05	
	22	(47) Telegram	.85	
	23	(48) Alex Hall	.40	
		(49) McElhone & Maloney	37.16	
	24	(50) Telegram & Express on 10 L. C. & L. Bonds	4.25	
	28	(51) Sidney S. Bell	800.	
		Purchase 10 L. E. & St. L. 1st Mort. Bonds	....	10.400
		Accrued Int. on same	90.	
June	2	(52) Express on 14 C. A. L. R. R. Bonds	42.	

	7 (53) Telegram	1.		
	9 (54) Express & expresses on L. C. & L. Bonds	7.10		
	11 Purchase 10 L. E. & St. L. 1st Mort. Bonds	....	10.250	
	Accrued Int. on same	115.		
	13 (55) Express on 10 L. E. & St. L. Bonds	4.		
109				
	15 (56) Express & Telegrams	2.10		
	16 (57) Same	2.65		
	Amounts forward	24.139.24	44.047.50	$30.

1894		Income	Prin. Rcd.
Mch. 23	Amounts forward	17.861.50	11.424.97
	Payment 3 L. C. & L. Bonds	....	3.157.50
	Int. on same	47.80	
Apr. 2	Quarterly Int. on 40 U. S. 4% Bonds	440.	
4	24 L. C. & L. Coupons	840.	
	1 same	3.50	
	115 L. & W.	4.025	
5	5 L. C. & L. Bonds payment	....	5.262.50
	Int. on same	90.41	
	Express on 2 Bonds returned	.80	
	4 J. M. & I. Coupons	140.	
12	Payment of 2 L. C. & L. Bonds	....	2.100.
	Accrued Int. on same	38.50	
16	Western Union Tel. Co. Div.	1.005	
May 4	30 Iron Mountain Ry. Coupons	1.005	
9	Payment I. L. C. & L. Bond	....	1.052.50
	Interest on same	24.69	
11	Payment 2 L. C. & L. I. mot. Bond	....	2.100
110			
	Int. on same		
28	Payment 2 L. C. & L. Bonds	....	10.525
	Accrued Int. on same	280	
June 2	Div. $50 Merchants Nat. Bk. of St. Louis	33.	
2	" $59 Third Nat. Bk. of St. Louis	15.	
5	13 L. & N. Henderson Div. Coupon	390.	
10	London Water Works Co.	250.	
11	Payment 10 L. C. & L. Bonds	....	10.500
	Accrued Int.	309.20	
	Amounts forward	26.854.56	46.127.47

1894		Exp.	Inv. made	Pri. Pd.
June 18	Amount forward	24.139.24	44.047.50	$30.
	(58) Express on 10 L. C. & L. Bonds.	4.		
	(59) Same L. E. & W. L. Bonds	4.		

		Purchase 10 L. E. & St. L. Bonds...	....	10.250
		Accrued Int.	125	
	25	Purchase 5 L. E. & St. L. Bonds....	....	5.125
		Accrued Int.	69.16	
		Purchase 5 L. E. & St. L. Bonds...	....	5.125
		Accrued Int.	69.16	
		Purchase 6 L. E. & St. L. Bonds....	....	6.180
		Accrued Int.	75.	
111				
		(60) Express 16 L. E. & St. L. Bonds	6.40	
	27	Purchase note Chas. Scott.....	....	1.800
	28	(61) Bronston & Allen	200.	
July	5	Purchase 2 L. E. & St. L. Bonds....	....	2.050
		Accrued Int.	31.	
	10	Purchase I. L. C. & L. Bond.....	....	1.050
	13	(62) Sidney S. Bell.....	800	
	14	(63) John T. Miller.....	.50	
	25	(64) H. M. Buford, Atty.....	250.	
		(65) Geo. C. Morgan, City Clerk....	5.	
	25	(66) J. H. Staples.....	6.30	
		(67) Bush & Curran.....	5.21	
		(68) T. T. Skillman.....	7.80	
	27	(69) W. King & Son.....	181.	
Aug.	3	(70) Ed Frazer, Sheriff.....	4.80	
		(71) J. C. Rogers Clerk F. C. C.....	16.35	
	4	(72) W. King & Son.....	12.50	
	6	(73) Ed Frazer S. F. C. C. 1894....	2.348.70	
	10	(74) Express on Water Works Coupon	1.60	
	15	(75) Sidney S. Bell...,.....	800.	
1894			Exp.	Inv. made
Aug.		(76) City Taxes 1894.....	5.051.20	
	18	Trust Company Commission.....	1.000.	
112				
		Commission	3.	
		Recording	3.50	
			35.220.42	75.627.50
		Balance principal	....	1.839.97

1894			Income.	Prin. Recd.
June	18	Amounts forward	26.854.56	46.127.47
	19	Payment 10 L. C. & L. Bonds.....	....	10.525.
		Accrued Int. on same.....	320.83	
	20	Express on 10 L. C. & L. Bonds refunded.....	4.	
	25	Payment 5 L. C. & L. Bonds.....	....	5.262.50
		Int. on same.....	168.19	
		Payment 5 L. C. & L. Bonds.....	....	5.262.50
		Int. on same.....	168.19	
		Payment 6 L. C. & L. Bonds.....	....	6.315
		Int. on same.....	192.50	

	27	Payment 13 shares Lex. Opera House Stock...	....	1.800
July	2	Quarterly Int. on 40 U. S. 4%.....	400.	
	3	33 L. C. & L. Coupons.....	1.155.	
		10 Cinti. Inclined Plane R. R. Co. Coupons.....	300	
		Div. Northern Bk. of Kentucky.....	1.548.	
113				
1894				
	5	Payment 2 L. C. & L. Bonds.....	....	2.105
		Int. on same.....	1.17	
	9	Div. S. T. & S. V. Co.....	30.	
		41 Maysville & Lexington Coupons.....	1.435.	
	24	Div. Western Union Tel. Co.....	1.005.	
		14 Atlantic & Charlotte Air Line Coupons....	490.	
July	25	Amt. recov. from Brick St. Injunct. case.....	129.05	
		Error June 11th, 1894.....	4.	
Aug.	10	Sale Pony	....	100.
	18	Overdraft Income	1.014.93	
			35.220.42	77.497.47

STATE OF KENTUCKY, *Fayette County, Sct.:*

I hereby certify that I have examined, stated above and settled to Aug. 18, 1894, the account of S. T. & S. V. Co., as Trustee of the estate of Clara D. Bell. Vouchers 1 to 27 and 29 to 76 are filed herewith as evidence of proper disbursements. I find an overdraft of income of $1014.93 to be made good to Trustee hereafter; and on hand a cash balance of principal of $1839.97, besides the securities mentioned.

114 Given under my hand, this 10th day of September, 1894.

THEO. LEWIS, *C. F. C. C.*,
By J. B. GORHAM, *D. C.*

STATE OF KENTUCKY, *Fayette County Court, Sct:*

October Term, 1894, October 8th, 1894.

The foregoing settlement of acct. of the Security Trust & Safety Vault Company, Trustee of Clara D. Bell, which was filed last Court and laid over for exceptions, was this day confirmed and ordered to be recorded, which has been done, no exceptions taken.

THEO. LEWIS, *C. F. C. C.*,
By J. B. GORHAM, *D. C.*

A copy.
Attest: CLAUDE CHINN, *C. F. C. C.*

115 Settlement of 1893 filed by Sec. T. & S. V. Co. as an Exhibit on the 22nd day of October, 1900, is in words and figures as follows, to-wit:—

CLARA D. BELL.

1894			Exp.	Inv. made.
Aug.	18	Balance Income	1.014.93	
Sept.	5	(1) Smith, Watkins & Co.	....	
		(2) Marchs Furniture Store	6.	
	7	(3) Mrs. Sydney S. Bell	800.	
	13	(4) E. Erd	3.	
	28	(5) R. H. Courtney	7.	
	29	(6) C. W. Schaceider	24.50	
Oct.	3	(7) The Milward Co	8.	
	6	(8) Wilson & Bro.	3.75	
		(9) G. B. Glass	22.40	
	20	(10) John Jordan	8.25	
Oct.	22	(11) John V. Uppington & Bro.	192.75	
		(12) Brower Scott & Frazee	39.35	
		(13) McElhone & Maloney	35.	
Nov.	2	(14) Sidney S. Bell	800.	

116

1894			
	5	(15) John Jordan	14.25
	15	(16) McElhone & Maloney	8.
	21	(17) John Jordan	7.
	22	(18) Express Charges on Bonds & Coupons	4.05
	24	(19) Curran & Justice	518.18
	30	(20) Sidney S. Bell	800.
Dec.	1	(21) Masner & Hayes	11.40
		(22) G. B. Glass	5.75
	11	(23) John Jordan	7.50
	14	(24) Geo. Travers	25.
	21	(25) Edward Frazer Sheriff taxes	390.
		(26) G. B. Sharp City Co. taxes	700.
	24	(27) M. G. Thompson	46.59
	31	(28) F. H. Hubett	14.60
1895			
Jan.	4	(29) Mrs. D. D. Bell	800.
	7	(30) T. G. Calvert	6.
		(31) T. T. Skillman	7.05
		(32) Jno. V. Uppington & Bro.	21.85
	14	(33) Wilson & Bro.	3.95
	21	(34) J. W. Whitney, M. D.	100.
	22	(35) H. M. Skillman, M. D.	150.
	23	(36) Express	.75

117

1894				
	28	Purchase 5 shares S. T. & S. V. Co. Stock.....	....	750.
	31	(37) Mrs. Sidney S. Bell.....	800.	
Feb.	2	Purchase J. D. Hume note.....	....	3.000.
		Amount forward	7.408.70	3.750.

				Invest-ments paid.
1894				
Aug.	18	Balance Principal		1.839.97
			Income	Prin. Red.
Sep.	1	Div. $60 on 10 shares 3rd Nat. Bk. St. Louis...	15.	
	15	9 Coupons Cumberland & O. R. R. Co.....	192.50	
		5 Henderson Bridges Coupons.....	150.	
		5 Southside St. Ry.....	150.	
	24	10 Evansville, Rockport & Eastern R. R. Coupons	300.	
		10 Evansville, Rockport & Eastern R. R. Coupons	300.	
	27	Henry C. Cook payment on lot Cor. Main & Ky. Ave.	....	155.
Oct.	1	Quarterly Int. on 40 U. S. 4% Bonds.....	400	
	2	115 L. & N. R. R. Coupons.....	4.025.	
		24 L. C. & L. 2nd. Mort. Coupons.....	840.	
		1 " " " "	3.50	
	4	4 J. M. & I. Coupons.....	140.	

118

Nov.	16	Western Union Tel. Co. Div.....	1.005.	
		St. Louis & Iron Mt. R. R. Coupons.....	1.050.	
Dec.	1	1st. Nat. Bank of St. Louis Div. $61.....	15.	
	3	Merchants Nat. Bk. St. Louis 51.....	33.	
	5	10 Coupons London Waterworks.....	250.	
	2[illegible]	Payment balance note on Jno. M. Bell.....	....	700.
		Int. on same.....	58.	
	27	Int. on Chas. Scott Note.....	41.62	
1895				
Jan.	2	32 L. C. & L. Coupons.....	1.120.	
		Quarterly Int. on 40 U. S. 4% $1000 Bonds....	400	
	7	Northern Bk. Div. 516 Shares.....	1.548.	
	14	Western Union Telegraph Co. Div.....	1.005.	
1895			Income	Inv. made.
Jan.	14	10 Cincinnati Inclined Plane Div.....	300	
		13 L. & N. Coupons Evansville Branch.....	390	
		Int. on 14 Atlanta & Charlotte Air Line Bonds..	490.	
	15	S. T. & S. V. Co. Div.....	30.	
Feb.	1	Int. on McClosky Notes to Feb. 2, 1895.....	105.	
	2	Discount in purchase Notes D. J. Hume.....	69.	
		41 Maysville & Lexington Coupons.....	1.435.	
		Amount forward	15.860.62	855.

				Investment paid
119		Amount Forward		1.839.97
1895			Exp.	Inv. made.
Feb.	2	Amount forward	7.408.70	3.750.
	5	Purchase 10 shares S. T. & S. V. Co. Stk	....	1.500
	14	(38) Albert Becker	16.	
		(39) Brower Scott & Frazee	165.	
	18	(40) H. F. Hillenmeyer for 22 trees	6.50	
	28	(41) Mrs. Sidney Cary—Policeman's wages	682.	
		(42) Mrs. Sidney Cary	800.	
Mar.	14	(43) W. W. Morton	25.	
	23	(44) Mrs. Sidney Cary	800.	
	27	(45) Wilson Bro.	2.	
Apr.	1	(46) F. H. Hubett	15.	
		(47) J. M. Lowe	45.	
	3	(48) W. King & Son	64.	
	10	(49) C. M. Taylor	50.	
	12	(50) J. F. Tisdale	12.50	
	16	(51) J. M. Lowe	22.50	
	30	(52) R. M. Ware	22.50	
May	6	(53) Mrs. Arthur Cary	800.	
	21	Purchase 5 L. C. & L. Bonds at 103½	....	5.175.
120				
1895				
		Accrued Int. on same	137.10	
		Purchase 3 L. C. & L. Bonds at 103½	....	3.105.
		Accrued Int. on same	82.83	
		(54) D. A. Sayre & Co. Express Charges	8.45	
	29	(55) J. F. Tisdale	10.	
June	1	(56) R. M. Ware	45.	
	4	(57) Mrs. Sidney Bell Cary	1.200	
	14	(58) S. G. Sharp C. C. City taxes 1895	4.498.31	
	24	(59) E. T. Burrows & Co	250.	
		(60) Brower Scott & Frazee	12.50	
		(61) Wm. H. Stewart's Sons	78.	
	27	(62) Jno. U. Uppington & Bro.	26.45	
		(63) McElhone & Maloney	46.20	
	29	(64) J. F. Tisdale	25.	
July	1	(65) R. M. Ware	45.	
	3	Purchase of 1 Fayette Co. Bond #4	....	500
	5	(66) Mrs. Arthur Cary	800.	
	6	(67) Glass & Proctor	110.	
		(68) J. F. Tisdale	20.	
	9	Purchase 3 Notes J. P. Shelby $3000 accrued Int. $58.85	....	3.056.85
121				
1895				
		Purchase Note C. S. Bell, Jr. $1000 accrued Int. $19.25	....	1.019.25
		Amount Forward	18.331.54	18.106.10

1895			Income	Invst. made	Pri. Rcd.
Feb.	2	Amount forward	15.860.62	1.839.97	855

1895			Income	Pri. Rcd.
Feb.	9	30 National Waterwarks Coupons	900	
		Int. on same	27	
	11	Latonia Jockey Club Div. $4	6.	
	28	Medical acct. of Drs. Skillman & Whitney refunded by Mrs. Sydney Cary	250.	
Mar.	2	3rd National Bank of St. Louis Div. $62	15.	
	4	9 Greensburg Branch R. R. Coupons	192.50	
	6	5 Henderson Bridge Coupons	150.	
		5 South Side R. R. Coupons	150.	
	19	10 Evansville, Rockport & Eastern Coup	300	
Apr.	1	Quarterly Int. on 40 U. S. $1000 Bonds	400.	
	5	24 L. C. & L. R. R. Coupons	840	
		1 Same Coupons	3.50	
		4 J. M. & I. R. R. Coupons	140.	

122

1895				
		115 L. & N. R. R. Coupons	4.025.	
	6	50 L. E. & St. L. "	1.500.	
		Int. on same	44.	
	19	Western Union Tel. Co. Div	1.005.	
	26	H. B. Nelson	16.	
May	10	Proceeds 8 shares Lex. Brick Co. Stk	....	880.
	24	30 Coupons St. L. & Iron Mt. R. R.	1.050.	
June	1	3rd Nat. Bk. St. Louis Div. $63 on 10 shares	15.	
		The Merchants Nat. Bk. of St. L. Div. $52	33.	
	6	R. H. King loss paid by Ins. Co.	30.50	
	21	10 London Waterworks Coupons	250.	
		13 L. & N. Henderson Div. Coupons	390.	
July	1	Quarterly Int. 40 U. S. 4% $1000 Bonds	400	
		Northern Bank Div.	1.548	
	3	40 L. C. & L. Coupons	1.400.	
	5	41 Maysville & Lex. Turnpike Co.	1.435.	
	5	14 Atlanta & Charlotte Air Line	490.	
	8	S. T. & S. F. Co. Div. 4%	100.	
		Amount forward	32.966.12	1.735.

			Investment paid.
		Amount forward	1.839.97

123

1895			Exp.	Inv. made.
July	11	Amount forward	18.331.54	18.106.10
	11	(69) W. Carrie	87.50	
	13	(70) J. F. Tisdale	25.00	
	16	(71) Mrs. Bell Cary	28.80	

	17	(72) M. G. Thompson	39.47	
	20	(73) T. T. Skillman	19.66	
		(74) J. F. Tisdale	20.	
	22	(75) G. B. Sharp	1.50	
	24	(76) J. F. Tisdale	20.	
		(77) J. F. Tisdale	121.40	
Aug.	1	(78) R. M. Ware	45.00	
	2	(79) Mrs. Arthur Cary	800.	
	14	(80) James Moore	8.50	
	15	(81) J. F. Fishback	2.70	
	19	(82) Express	.25	
	24	(83) Glass & Proctor	16.95	
	26	(84) Curran & Justice	207.60	
	31	(85) R. M. Ware	45.00	
Sep.	3	(86) Mrs. Arthur Cary	800.	
		(87) Same for repairs	30.50	
	21	(88) R. H. Courtney	7.00	
Sep.	30	(89) R. M. Ware	45.00	
		(90) Mrs. Arthur Cary	800.	

124

1895				
Oct.	1	(91) C. M. Taylor	6.00	
	2	(92) State and County Tax	3.231.94	
		(93) Express	2.45	
	5	(94) Masner & Hayes	12.00	
	10	(95) James Moore	2.00	
	17	(96) Willa Viley Commission	13.20	
	19	(97) Glass & Proctor	140.92	
	31	(98) R. M. Ware	45.00	
Nov.	2	Purchase 2 L. & N. Greensburg Branch Bonds 2000 at 105% accrued int. 23.33 Bonds #152 & 179	....	2.123.33
	11	(99) Mrs. Bell Cary	800.00	
	13	(100) Express	1.50	
		(101) W. Carrie	200.00	
	18	S. T. & S. V. Co. Commission	1.000.00	
		F. A. Bullock J. F. C. C.	5.	
		Recording	3.	
		Balance income	18.133.23	
			45.999.60	20.229.43

			Income	Invt. paid	Prin. Pd.
1895					
July	11	Amount forward	32.966.12	1.839.97	1.735

			Income	Prin. Rcd.
1895				
July	11	Merchants Nat. Bk. 105% Div. on 10 Shrs	....	1.155.

125

1895				
July	13	Henry C. Cook	....	720
	16	Rents Rec'd	20.	

	22	Western Union Tel. Co. Div.	1.005.	
		Merchants Nat. Bk. 10% Div. 11 Shrs.	....	110
1895				
July		Chas. Scott	41.63	
Aug.	1	Interest J. D. Hume note	90.00	
	6	30 Nat. Water Works Coupons	900.	
		Interest on same	16.05	
	19	Merchants Nat. Bk. Div. $3 5% involuntary liquidation	....	55.
	27	Rents received	10.	
Sep.	2	Div. $64 3rd. Nat. Bk. of St. Louis	15.00	
	12	5 Henderson Bridge Coupons	150.	
		5 South Side R. R.	150.	
		6 Cumberland R. R.	192.50	
	10	Evansville, Rockport & Eastern R. R. Coupons.	300.	
	21	Interest on I. P. Shelby	97.50	
	30	Rents received	20.00	
Oct.	1	Quarterly Int. on U. S. 4% $100 Bond	400.	
	2	24 L. C. & L. 2nd Mort. Coupons	840.00	
		1 same	3.50	
		115 L. & N. Coupons	4.025	
126				
1895				
	7	50 L. E. & St. Louis Coupons $1500 Interest $45.00	1.545	
		4 J. M. & I. Coupons	140	
	12	Int. on notes C. S. Bell, Jr.	35.	
	16	H. C. Cook	....	575.00
		Int. on same	62.30	
	16	H. C. Cook extra 20 ft. of ground E. Main	....	660.
	21	Western Union Div. 804 shares	1.005	
	24	Div. 240% declared by voluntary liquidation by Merchants Nat. Bank St. Louis, Mo.	....	33.
	28	Rents received	10.	
Nov.	8	Same	10.	
	11	30 Coupons St. Louis & Iron Mt. R'way	1.050.00	
		Overdraft Principal	13.346.46	
			45.099.60	5.043
				Investments paid 15.186.43

STATE OF KENTUCKY, *Fayette County, Sct:*

127 I hereby certify that I have *been* examined, stated and settled the account of The S. T. & S. V. Co. Lexington, Ky., as Trustee of the estate of Clara D. Bell—Vouchers 1 to 101 are filed as evidence of proper disbursement.

I find the foregoing settlement to be correct and proper.
Given under my hand, this 10th day of Feb'y, 1896.

F. A. BULLOCK,
Judge Fayette County Court.

STATE OF KENTUCKY, *Fayette County Court, Set:*

March Term, 1896, March 9th, 1896.

The foregoing settlement of account of the S. T. & S. V. Co., Trustee of Clara D. Bell, which was filed last Court and laid over for exceptions, was on this day confirmed and ordered to be recorded, which has been done, no exceptions taken.

CLAUDE CHINN, *Clerk.*

A copy.
Attest:

CLAUDE CHINN, *C. F. C. C.*

128 Settlement 1905 filed by Sec. T. & S. V. Co. as an "Exhibit" on the 22nd day of October, 1900, is in words and figures as follows, to-wit:—

CLARA D. BELL.

			Exp.	Invt. made.
1895				
Nov.	18	Overdraft Principal	....	13.346.46
	25	(1) Glass & Proctor	23.20	
	30	(2) E. D. Sayre expense taking 20 Bonds to Louisville	1.90	
		(3) F. H. Hulett	70.25	
Dec.	2	(4) R. M. Ware	45.00	
	3	Purchase of sale bond E. P. Weathers	....	5.751.18
		Purchase of sale bond J. H. Graves	....	3.629.67
	9	(5) Mrs. Bell Cary	800.	
	11	(6) Express on 1 L. C. Bond to Lon	.50	
		(73 Wilson & Bro	4.00	
	13	(8) A. Lotzes Sons & Co	349.00	
	14	(9) John Kinsella	27.80	
	16	(10) A. Lotzes Sons & Co	16.10	
	30	(11) The S. T. & S. V. Co. for storage	10.00	
129				
1895				
Dec.	31	(12) R. M. Ware	45.00	
1896				
Jan.	2	Purchase of note Jacob Shaffer due 1/19/98	....	175.50
		Purchase same due 1/19/99	....	163.50
		Same due 1/19/99	....	151.50
		(13) John Kinsella	68.11	
	7	(14) C. D. Cunningham	695.	
	10	(15) Mrs. Bell Cary	800.00	
	20	(16) E. D. Sarye expenses to Lon	1.65	
	30	(17) Express on Coupons to N. Y.	1.80	
	31	(18) R. M. Ware	45.00	

Feb.	3	(19) M. G. Thompson	69.10	
	5	(20) Mrs. Bell Cary	800.00	
	8	(21) Express on Bonds to N. Y.	15.30	
	17	(22) Glass & Proctor	6.85	
	20	Purchase of note of Mrs. M. E. Goodloe	....	5.322.75
	24	Purchase of note of Wm. L. Land	....	8.000.
		Purchase of same	....	8.000
	25	(23) Express on Nat. Waterworks Coupons	1.80	
	28	(24) Wm. H. Stewart's Sons	13.40	
Mar.	2	(25) E. M. Ware	45.00	
	6	Purchase of note Ashland B. & L. Assn	....	2.005.80
130				
	7	(26) Mrs. Bell Cary	800.00	
	11	Purchase of note ED. & Ruth Lawrence	....	1.000.00
	18	Purchase of 2 notes Main St. Chrs. Ch.	....	2.046.70
Apr.	1	Purchase of note C. H. Stall	....	1.000.
1895				
Apr.	3	(26½) Purchase of note D. C. Collins	....	16.300.
			4.764.85	66.893.06
			Income	Prin. Rcd.
1895				
Nov.	18	Balance Income	18.133.22	
	30	Sale of 5 L. C. & L. 1st 7% Bonds, 636, 638, 788, 820, & 618	....	5.131.25
		Accrued interest on same	143.88	
Dec.	2	Third Nat. Bank of St. Louis Div. $65 on 10 Shares	15.	
				Investments paid
	7	Payment of 1 Fayette County Bond $4		500.
			Income	Prin. Rcd.
		Interest on same	13.08	
	12	Sale of 1 L. C. & L. Bond $562 at 102¾	....	1.027.50
131				
		Interest on same	31.50	
	13	L. & N. R. R. E. H. & N. Branch Coupons	390.	
	24	Rents received	10.	
	27	Int. on note Chas F. B. Scott	59.90	
1896				
Jan.	2	20 L. C. & L. Coupons	700.	
		41 Maysville & Lex. Ry. Coupons	1.435.	
		Quarterly Int. on 40 U. S. 4% $1000 Bonds	400	
	6	14 Atlanta & Charlotte Air Line Coupons	490.	
		Northern Bank Dividend	1.548.	
	11	14 L. C. & L. Coupons	490.	
	13	The S. T. & S. V. Co. Div	100.	
	17	Western Union Div	1.005.	
Jan.	28	Int. on notes D. J. Hume	90	

Feb.	1	W. Bush Nelson part payment McClosky note..	....	500.
		Interest on same.....	105.	
	3	Latonia Jockey Club Div.....	6.	
	12	Payment of 30 Nat. Water Works Co. Bonds...	....	30.000
		Interest on same.....	580.	
				Investments paid
	24	Payment of note of I. P. Shelby.....		3.056.85

132

			Income	Prin. Rcd.
		Interest on same to Feb. 21-96.....	24.39	
Mar.	2	Third Nat. Bank of St. Louis Div.....	15.00	
	5	Rents received	10.	
Apr.	1	5 South Side Ry. Coupons.....	150.00	
		5 Henderson Bridge Coupons.....	150.00	
		11 Cumberland & Ohio R. R. Coupons.....	262.50	
		Quarterly Int. on $40000 U. S. 4% Bonds.....	400.00	
	2	115 L. & N. R. R. Coupons.....	4.025.00	
	2	24 L. C. & L. 2nd Mortg.....	840.	
		1 Same	3.50	
		4 J. M. & I. Coupons.....	140.00	
		Int. on note C. H. Stoll.....	6.65	
			31.772.62	36.658.75
				Investments paid 3.556.85

			Exp.	Invst. made
1896				
Apr.	3	Amount forward	4.764.85	66.893.06
	10	(27) Mrs. Bell Cary.....	800.	
	13	Purchase of Note Mrs. M. E. Goodloe.....	....	5.322.75
Apr.		Purchase of note L. & J. W. Sayre.....	....	5.000.

133

1896				
Apr.	16	(28) R. M. Ware.....	45.	
	25	(29) McElhone & Maloney.....	19.05	
		(30) G. B. Glass.....	21.90	
May	2	(31) Mrs. Bell Cary.....	800.	
	6	(32) Alex Miller	6.	
	9	(33) John Kinseller	27.90	
	25	Purchase of note C. S. Evans & W. P. Knight...	....	3.960.
June	1	(34) L. & Ry. Co.....	160.05	
		(35) John V. Uppington & Bro.....	135	
	5	(36) Mrs. Bell Cary.....	1.200	
	6	(37) Express on Cinti. Inc. Plane Bonds to Lon.	3.	
		(38) S. A. Charles.....	15.	
	9	(39) John M. Goesham.....	143.00	
	15	(40) Samuel Arnett	22.50	

	19	(41) R. M. Ware	90.	
	25	(42) ½ City Tax for 1896	2.171.88	
	27	(43) C. D. Cunningham	114.	
July	1	(44) Mrs. Bell Cary	800.	
		(45) Samuel Arnett	22.50	
	10	(46) M. G. Thompson	21.00	
	15	(47) Samuel Arnett	22.50	

134

1896			Income	Invst. made
		Purchase of Note Mary L. & J. W. Sayre	....	5.000.
July	24	(48) C. W. Grimes	5.00	
		(49) James Moore	2.50	
		(50) B. F. Proctor	4.20	
	25	(51) Basit Saunders	3.50	
	28	(52) J. W. Adams	25.00	
	30	(53) Samuel Arnett	22.50	
Aug.	1	(54) J. S. Fishback	4.75	
	1	(55) Claude Chinn	2.70	
		(56) Same	1.45	
	3	(57) Mrs. Bell Cary	800.00	
	11	(58) McElhone & Maloney	16.40	
	13	(59) J. F. Tisdale	1.00	
	17	(60) Same	9.60	
	26	(61) Oldham & Carr	9.80	
			12.313.53	86.175.81

1896			Income	Inv. Pd.	Prin. Rcd.
Apr.	3	Amount forward	31.772.62	3.556.85	36.658.75
	7	Part payment on Note C. S. Bell, Jr.	....	519.25	
		Int. on same	15.75		

135

Apr.	9	Proceeds of sale 3 L. C. & L. 1st Mortg. bonds #1691, 1695, & 1701 at 101½	....	....	3.045.
		Int. on same	57.16		
	9	Proceeds 2 notes Main St. Chris. Ch.	....	2.046.70	
		Int. on same	18.05		
		Proceeds note Ed & Ruth Lawrence.	....	1.000.	
		Int. on same	5.70		
		Proceeds note Ashland B. & S. Assn.	....	2.005.80	
		Int. on same	13.20		
	13	Payment of note Mrs. M. E. Goodloe.	....	5.322.75	
		Int. on same	53.23		
	23	H. C. Cook for 5 feet of ground on E. Main St. adjoining H. C. Cook's lot	....	....	150.
	27	Western Union Tel. Co. Div	1.005.00		
		Rents received	10.00		
May	18	30 St. Louis & Iron Mt. R. R. Coupons	1.050.00		

June	1	3rd Nat. Bk. St. Louis Div. $67.....	15.00	
	4	Int. on note C. H. Stoll to May 1/96.	8.65	
	17	Rents received	20.00	
	30	31 L. C. & L. Coupons.....	1.085.00	
		41 Maysville & Lexington Ry. Coupons	1.435.00	
136				
July	1	Quarterly Int. on 40000 U. S. 4% bonds	400.00	
	2	13 Evansville & Henderson R. R. Company Coupons	390.00	
	7	Northern Bank Div.....	1.290.00	
		10 Evansville, Rockport & East in Coupons	300.00	
		Int. on same.....	8.90	
	13	The S. T. & S. V. Co., Div.....	100.00	
	15	Payment of note Mary L. & J. W. Sayre	....	5.000.
		Int. on same.....	150.00	
	20	Western Union Tel. Co. Div.....	1.005.	
	28	14 Atlanta & Charlotte Air Line Coupons	490.00	
Aug.	21	Payment of note Wm. L. Land.....	....	8.000
		Int. on same.....	240.	
	25	Rents received	20.00	
			40.958.26	27.451.35
				39.853.75

137

1896			Exp.	Invst. made
Aug.	26	Amount forward	12.313.53	86.175.81
	31	(62) Samuel Arnett	45.00	
		Purchase of note A. W. Warnock.....	....	1.500
Sep.	2	(62½) Cancellation & Surrender 30 Coupons $25 each of Dec. '95, June '96 & Dec. '96, per authority Fayette C. C. (London Waterworks)	750.00	
	4	(63) Mrs. Bell Cary.....	800.	
	11	(64) Telegram to N. Y.....	.55	
	12	(65) Brick St. tax for 1895.....	898.24	
	18	(66) Stein Bros.	76.35	
	28	(67) J. D. Hunt, Atty.....	85.50	
	30	(68) Express on Coupons to Lon.....	2.50	
		(69) Samuel Arnett	45.00	
Oct.	6	(70) T. J. Granggham.....	5.00	
	8	(71) J. S. Fishback	11.60	
	9	(72) J. W. Adams.....	15.00	
	10	(73) Mrs. Bell Cary.....	800.	
	19	(74) L. R. Young.....	25.75	
	24	(75) M. G. Thompson.....	8.00	
	27	(75½) Purchase of 6 J. M. & I. Mortgage Bonds	....	6.780
		Accrued interest on same.....	25.68	

138

1896				
		(76) F. H. Hulett	6.75	
	29	(77) Express on 1 L. C. & L. Bond to Lon	6.40	
	31	(78) Brick St. Tax for 1896	868.23	
		(79) Samuel Arnett	45.00	
Nov.	6	Purchase of notes T. H. Stevens	....	20.000
	9	(80) Telegram from Almstedt Bros	.50	
		(81) W. King & Son Prem. on Ins	16.00	
	10	(82) Telegram to N. Y	.43	
		(83) T. T. Skillman	8.55	
		(84) Mrs. Bell Cary	800.00	
		(85) E. D. Sayre expenses to Lon	6.00	
		(86) Recording mortgage T. H. Stevens	1.75	
Nov.	28	(87) State & County tax for 1896	2.852.20	
	30	(88) Samuel Arnett	45.00	
Dec.	11	(89) Mrs. Bell Cary	800.	
	22	(90) Last held City tax for 1896	2.171.87	
	23	(91) Mrs. Bell Cary	800.00	
		Trust Co. Com. $1000.00 F. A. Bullock 3.00	1.003.00	
		Recording	3.50	
		Balance income	26.161.86	
			51.504.74	114.455.81

139

1896			Income	Invst. Pd.	Prin. Red.
Aug.	26	Amount forward	40.958.26	27.451.35	39.853.75
Sep.	2	10 Lou. Waterworks Coupons, Dec., '95, Same June, '96, Same Dec., '96	750.00		
	2	11 Cumberland & Ohio Ry. Co. Coupons	262.50		
	8	5 Henderson Bridge Ry. Co	150.00		
		5 South Side Ry. Co	150.00		
	9	Int. on note Chas. F. B. Scott	23.35		
Oct.	1	Quarterly Int. on $40000 U. S. 4% Bonds	400.00		
	2	115 L. & N. Coupons	4.025		
		24 L. C. & L. " 2nd Mortg	840.00		
		1 Same	3.50		
		4 J. M. & I. Coupons	140.00		
	10	Payment of note D. C. Collins	....	16.300.	
		Int. on same	513.45		
	12	Int. on note C. S. Bell, Jr	17.50		
	24	Int. on sale bond Ed Weathers	345.00		
Nov.	2	Int. on sale bond J. H. Graves	217.78		
Nov.	6	Sale of 5 L. & C. & L. Bonds #1196, 2605, 2616, 16820 & 335	....	5.000	
		Int. on same	116.75		

140

1896					
Nov.	7	Western Union Tel. Co. Div.....	1.005		
	11	Rents received	10.00		
	12	30 St. Louis & Iron Mt. Coupons...	1.050.		
Dec.	5	Int. on note C. H. Stoll.....	46.65		
	8	Payment of 1 Evansville, Henderson & Nashville called Bond #2166....	....	....	1.100
	13	Coupons Same.....	390.00		
	19	Int. on note D. J. Hume to Aug. 2/96	90.00		
	23	Overdraft Principal	....	24.750.71	
			51.504.74	73.502.06	40.953.75

STATE OF KENTUCKY, *Fayette County, Sct:*

I hereby certify that I have examined, stated and settled the account of S. T. & S. V. Co., as Trustee of the estate of Clara D. Bell —— Vouchers 1 to 91 and filed as evidence of proper disbursement.

I find the foregoing settlement to be correct and proper.

141 Given under my hand, this 14th day of June, 1897.

F. A. BULLOCK,
Judge, Fayette County Court.

STATE OF KENTUCKY, *Fayette County Court.*

July Term, 1897, July 12th, 1897.

The foregoing settlement of account of Security Trust & Safety Vault Company, as Trustee of Clara D. Bell, which was filed in my office at the June Court and laid over for exceptions, was this day confirmed and ordered to be recorded, which has been truly done, there having been no exceptions taken.

Attest: CLAUDE CHINN, *C. F. C. C.*

A copy attest: CLAUDE CHINN, *C. F. C. C.*

Settlement 1896 filed by Sec. T. & S. V. Co. as "Exhibit" on the 22nd day of October, 1900, is in words and figures as follows, to-wit:—

142 CLARA D BELL.

Disbursements:

			Exp.	Prin. Pd.
1896				
Dec.	23	Overdraft Principal per last Settlemen.....	....	24.750.71
		(1) Samuel Arnett	50.00	
1897				
Jan.	7	(2) W. King & Son.....	78.00	
	13	(3) C. D. Cunningham	61.90	
		(4) McElhone & Maloney.....	.85	

	30	(5) Samuel Arnett	45.00	
Feb.	2	(6) Mrs. Bell Cary	800.00	
	3	(7) R. J. Mahoney D. T. Co.	152.10	
Feb.	4	(8) F. A. Bullock J. F. C. C.	4.00	
	5	(9) T. J. Granaham	4.00	
Mar.	1	(10) Samuel Arnett	45.00	
	12	(11) M. G. Thompson	8.30	
	16	(12) Mrs. Arthur Cary	800.00	
	25	(13) City tax for 1896 Ky. Ave.	13.66	
		(14) G. B. Sharp	1.50	
Apr.	1	(15) Samuel Arnett	45.00	
	3	(16) Mrs. Bell Cary	800.00	
	14	(17) Mrs. Bell Cary Exchange of horses	....	
	16	(18) E. D. Sayre & W. H. Cassell	10.50	
	26	(19) Express on Coupons	1.85	
143				
1897				
Apr.	27	(20) E. D. Sayre	2.05	
	30	(21) Samuel Arnett	45.00	
May	7	(22) Wilson & Bro.	18.00	
	20	(23) John V. Uppington & Bro.	121.15	
		(24) McElhone & Maloney	7.60	
	22	(25) Mrs. Bell Cary	800.	
	26	(26) T. J. Granshan	3.00	
		(27) W. A. Gunn	5.00	
June	1	(28) Mrs. Bell Cary	800.00	
		(29) Samuel Arnett	45.00	
	10	(30) ½ City tax for 1897	2.165.40	
	12	(31) T. H. Clay Commission	30.00	
	16	(32) Express on Bonds	3.60	
	18	(33) Same	3.60	
		Amounts forward	6.971.06	24.800.71
1897			Exp.	Prin. Pd.
		Disbursements (Cont.)	6.971.06	24.800.71
1897				
June	25	(34) Brick St. tax for 1897	838.30	
	28	(35) Express on Coupons	.75	
	29	(36) Patrick Sharkey	12.00	
144				
1897				
July	1	(37) Samuel Arnett	45.00	
		(38) Lex. & Eastern R'y Co.	52.00	
	6	(39) Stern Bros.	34.70	
	7	(40) Clark & Howard	7.85	
	15	(41) Mrs. Bell Cary	1.200.00	
July	27	(42) C. D. Cunnungham	15.00	
		(43) Price & Sayre	344.25	
	31	(44) Samuel Arnett	45.00	

Aug.	2	(45) Mrs. Arthur Cary	800.00	
	5	(46) Price & Sayre	15.00	
	7	(47) McElhone & Maloney	1.30	
	12	(48) E. D. Sayre	9.90	
	18	(49) Express on Coupons	.25	
	31	(50) Samuel Arnett	45.00	
	31	(51) Mrs. Bell Cary	800.00	
Sep.	1	(52) State & County Tax for 1897	3.531.70	
	7	(53) McElhone & Maloney	.85	
		(54) Purchase Wilgus Block	....	27.825.00
		(54½) Interest on same	129.84	
	15	(55) Recording Deeds to same	3.50	
	25	(56) John V. Upington	162.05	
		(57) Express of E. D. Sayre & W. H. Cassell to Louisville	5.50	

145

1897				
Sept.	30	(58) Samuel Arnett	45.00	
Oct.	2	(59) I. S. Worsham	2.00	
		(60) L. P. Young	1.50	
	27	(61) Express on Bonds	1.20	
	29	(62) J. S. Fishback	7.15	
Nov.	1	(63) F. H. Hulett	3.75	
		(64) Samuel Arnett	45.00	
	3	(65) Mrs. Bell Cary	1.600.00	
	5	Trust Co. Commission	1.000.00	
		F. A. Bullock, Judge's Fee & recording	10.00	
		Balance income	37.899.85	
		Investment of Principal	....	48.644.64
			55.687.15	101.270.35

The estate consists of residence property and vacant lots on East Main Street, house and lot on Kentucky Avenue and Wilgus Block on West Main Street in Lexington, Ky., and the following securities:

Sundry Stocks, Face value	135.510.00
Sundry Notes, "	116.879.28
Sundry Bonds, good, bad & doubtful, Face value	322.600.00

146 The above and foregoing contain a true statement of said account.

JAMES A. HEADLEY,
Vice President.

Subscribed and sworn to before me by James A. Headley, this 27th day of November, 1897.

R. MANNING,
Ex. F. C. Ct., Ky.

	Receipts	Income	Prin. Rcd.
1896			
Dec. 23	Balance Income as per last settlement	26.161.86	
1897			
Jan. 5	Payment 14 L. C. & L. Bonds	.....	14.000.00
Jan. 18	Merchants Nat. Bank St. Louis 1% in liquidation	.....	11.00
May 4	Payment 30 St. Louis & Iron Mountain R. R. 2nd mtge Gold Bonds	.....	30.000.00
July 15	Payment balance note John H. M. McClosky	.....	1.000.00
Aug. 12	Sale of 17 St. Louis & N. N. R. Bonds	.....	17.000.00
14	" 19 Same	.....	9.000.00
18	Proceeds of option on 10 Cincinnati Inclined Plane Ry. Co. Bonds	.....	600.00
Sept. 29	Proceeds of Cincinnati Inclined Plane Ry. Co. Bonds per order Court	.....	5.100.00
Oct. 30	Interest collected to date	22.575.19	
	Dividends " " "	6.584.00	
147	Rents	366.10	
	Overdraft of Principal	.....	24.559.35
		56.687.15	101.270.35

STATE OF KENTUCKY, *Fayette County, sct:*

I hereby certify that I have examined, stated and settled the account of S. T. & S. V. Co., as Trustee of the estate of Clara D. Bell ———— Vouchers 1 to 65 are filed as evidence of proper disbursement. I find the foregoing to be correct and proper.

Given under my hand, this 14th day of Feb'y, 1898.

F. A. BULLOCK,
Judge Fayette County Court.

STATE OF KENTUCKY, *Fayette County Court.*

February Term, 1898, February 14th, 1898.

148 The foregoing settlement of account of S. T. & S. V. Co., as Trustee of Clara D. Bell, after having been produced in open Court and filed and laid over 30 days for exceptions, and none being taken, same was confirmed and ordered to be recorded, which is duly done.

Attest: CLAUDE CHINN, *Clerk,*
By JNO. J. McKENNA, *D. C.*

A copy.
Attest: CLAUDE CHINN, *C. F. C. C.*

Depo. for Deft. Filed.

And afterwards on the 4th day of November, 1901, Depositions for Defendant were filed in words and figures as follows, to-wit:

149 *Commission to take Depo.*

Fayette Circuit Court.

CLARA D. BELL'S TRUSTEE, Plaintiff,
vs.
CITY OF LEXINGTON, &C., Defendants.

STATE OF KENTUCKY:

Fayette Circuit Court.

Commission.

To Any Officer authorized to Take Depositions in or out of this State:

You are hereby commissioned to take the deposition of Charles L. Vaughn upon the interrogatories and cross-interrogatories hereto annexed.

Given under my hand this 5th. day of September, 1901.

JAMES C. ROGERS,
Clerk Fayette Circuit Court,
By J. H. CARTER, JR., *D. C.*

150 Fayette Circuit Court.

SECURITY TRUST & SAFETY VAULT CO., OF LEXINGTON, KENTUCKY,
Trustee of Clara D. Bell, Plaintiff,
vs.
CITY OF LEXINGTON, Defendant.

Interrogatories.

The following interrogatories are to be propounded to Charles L. Vaughn, a resident of the City of New York, State of New York, for the purpose of taking his deposition to be read on behalf of the defendant, City of Lexington, in an action in which said City is defendant and the Security Trust & Safety Vault Company, as Trustee of Clara D. Bell, is plaintiff.

Q. 1. State your name, age, residence and occupation.

Q. 2. If in answer to the first question you state that you are a resident of New York and are a broker or dealer in stocks and bonds, state how long you have been a dealer in stocks and bonds, and state

whether you are acquainted with the value of stocks and bonds generally in New York during that period.

151 Q. 3. If in answer to the last question you state that you have been a broker or dealer in stocks and bonds during and since the year 1893, state whether you are acquainted with and know the value of stocks and bonds during that period.

Q. 4. If in answer to the last question you state that you have been a broker or dealer in stocks and bonds during the period mentioned, state whether or not you know the fair cash value of the following described bond upon each of the following dates, to-wit, a $1,000 1st. Mortgage Bond of the South Side Railway of Cleveland, Ohio, upon the 15th. day of September, 1893; the 10th. day of January, 1894; 15th day of September, 1894; 15th day of September, 1895; 15th day of September, 1896, and the 15th day of September, 1897, and give the value, if you can, upon each date separately.

Q. 5. State whether or not you know the fair cash value of the following described bond upon each of the following dates, one $1,00- Bond of the J. M. & I. (Jeff. Mad. & Ind.) upon each of the following dates, to-wit: 15th day of September, 1893, the 10th day of January, 1894, the 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896, and the 15th day of September, 1897; and if you know the value of said bond upon each of said dates, give the value upon each of said dates separately.

152 Q. 6. State whether or not you know the fair cash value of a $1,000 Bond of the London, Ohio, Waterworks, upon each of the following dates, to-wit: 15th day of September, 1893, 10th. day of January, 1894, 15th day of September, 1894, 15th day of September, 1895, 15th day of September, 1896, and 15th day of September, 1897; and if you know the value of said Bond upon all or any of said dates, give the value upon each date separate.

Q. 7. State whether or not you know the fair cash value of a $1,000 Bond of the Cincinnati Inclined Plane, or Inclined Railway Company upon each of the following dates, to-wit: 15th day of September, 1893, 10th day of January, 1894, 15th day of September, 1895, 15th day of September, 1896, and the 15th day of September, 1897; and if you know the value of said bond upon all or any of said dates, give the value upon each date separately.

Q. 8. State whether or not you know the fair cash value of $1,000 Bond of the Maysville & Lexington Railroad upon each of the following dates, to-wit: 15th. day of September, 1893, 10th day of January, 1894, 15th day of September, 1894, 15th day of September, 1895, 15th day of September, 1896, and the 15th day of September, 1897; and if you know the value of said bond upon all or any

153 of said dates, give the value upon each date separately.

Q. 9. State whether or not you know the fair cash value of a $1,000 Bond of the L. & N. R. R. Consolidated Mortgage Bond upon each of the following dates, to-wit: 15th day of September, 1893, 10th day of January, 1894, 15th day of September, 1894, 15th day of September, 1895, 15th day of September, 1896, and the 15th

day of September, 1897; and if you know the value upon all or any of said dates, give the value upon each date separately.

Q. 10. State whether or not you know the fair cash value of a $1,000 Bond of the Atlanta & Charlotte Air Line upon each of the following dates, to-wit: 15th day of September, 1893, 10th day of January, 1894, 15th day of September, 1894, 15th day of September, 1895, 15th day of September, 1896, and the 15th day of September, 1897; and if you know the value of said bond upon all or any of said dates, give the value upon each date separately.

Q. 11. State whether or not you know the fair cash value of a $1,000 Bond of the Evansville, Rockport & Eastern R. R. upon each of the following dates, to-wit: 15th day of September, 1893, 10th day of January, 1894, 15th day of September, 1894, 15th day of September, 1895, 15th day of September, 1896, and 15th day
154 of Sept. 1897; and if you know the value of said bond upon all or any of said dates, give the value upon each date separately.

Q. 12. State whether or not you know the fair cash value of a share of the Western Union Telegraph Company upon each of the following dates to-wit: 15th day of September, 1893, 10th day of January, 1894, 15th day of September, 1894, 15th day of September, 1895, 15th day of September, 1896, and the 15th day of September, 1897, and if you know the value of said share of stock upon all or any of said dates, give the value upon each date separately.

Q. 13. State whether or not you know the fair cash value of a $1,000 2nd Mortgage Bond of the Louisville, Cincinnati & Lexington railroad Bond upon each of the following dates, to-wit: 15th day of September, 1893, 10th. day of January, 1894, 15th day of September, 1894, 15th day of September, 1895, 15th day of September, 1896, and the 15th day of September, 1897; and if you know the value of said bond upon any or all of said dates, give the value upon each date separately.

Q. 14. State whether or not you know the fair cash value of a $1,000 1st Mortgage Bond of the Louisville, Cincinnati & Lexington railroad upon each of the following dates, to-wit: 15th day of September, 1893, 10th day of January, 1894, 15th day of September, 1894, 15th day of September, 1895, 15th day of September,
155 1896, and the 15th day of September, 1897; and if you know the value of said bond upon any or all of said dates, give the value upon each date separately.

Q. 15. State whether or not you know the fair cash value of a $1,000 Bond of the St. Louis & Iron Mountain R. R. upon each of the following dates to-wit: 15th day of September, 1893, 10th day of January, 1894, 15th day of September, 1894, 15th day of September, 1895, and the 15th day of September, 1896; and if you know the value of said bond upon all or any of such dates, give the value upon each date separately.

Q. 16. State whether or not you know the fair cash value of a $1,000 Bond of the L. & N. (Evansville, Nashville & Henderson) railroad upon each of the following dates, to-wit: 15th day of September, 1893, 10th day of January, 1894, 15th day of September,

1894, 15th day of September, 1895, 15th day of September, 1896, and the 15th day of September, 1897; and if you know the value of said bond upon any or all of said dates, give the value upon each date separately.

Q. 17. State whether or not you know the fair cash value of a $1,000 Bond of the Latonia Waterworks, of New York, upon each of the following dates to-wit: upon the 15th day of September, 1893, 10th day of January, 1894, 15th day of September, 1894, and the 15th day of September, 1895; and if you know the value of said bond upon all or any of said dates, give the value upon each date separately.

156 Q. 18. State whether or not you know the fair cash value of a $1,000 Bond of the Henderson Bridge Company upon each of the following dates, to-wit: Upon September 15th, 1894, September 15, 1895, September 15, 1896, and September 15, 1897; and if you know the value of said bond upon all or any of said dates, give the value upon each date separately.

Q. 19. State whether or not you know the fair cash value of a $1,000 Bond of the L. & N. (*reensburg Branch) Railroad upon each of the following dates, to-wit: Upon September 15, 1894, September 15, 1895, September 15, 1896, and September 15, 1897; and if you know the value of said bond upon each or all of said dates, give the value upon each date separately.

Q. 20. State whether or not you know the fair cash value of a $1,000 Bond of the Louisville, Evansville & St. Louis railroad upon each of the following dates, to-wit: Upon September 15, 1894, September 15, 1895, September 15, 1896, and September 15, 1897; and if you know the value of said bond upon any or all of said dates, give the value upon each date separately.

MORTON & DARNALL.
GEO. S. SHANKLIN.
GEO. C. WEBB.

A True Copy.
Attest:

J. C. ROGERS, *C. F. C. C.*,
By J. H. CARTER, Jr., *D. C.*

157 Fayette Circuit Court.

SECURITY TRUST & SAFETY VAULT COMPANY OF LEXINGTON, KY., Trustee of Clara D. Bell, Plaintiff,
vs.
CITY OF LEXINGTON, &c., Defendants.

Cross-Interrogatories.

The Plaintiff propounds the following cross-interrogatories to Charles L. Vaughn, of New York City, New York, the witness introduced on behalf of the defendants.

Question 1. How long have you been engaged in the business of stock broker in New York City or in the business of dealing in stocks and bonds? Do you deal on your own account and if so, to what

extent; or do you simply act as broker in negotiating transactions for other persons?

Question 2. State how often and to what extent you have had transactions in each of the different kinds of bonds and stocks mentioned in the interrogatories propounded by the Defendants, stating separately the extent and time and character of the
158 transactions as to each of the securities, referred to, during the period covered by the interrogatories. State whether as to any of said securities you as broker individually had any transactions in the sale or purchase of them on or immediately about the 15th day of September in the different years mentioned in the interrogatory. If so state in detail these transactions, as to what stocks and bonds they related, and the parties interested in them.

Question 3. Are your statements made as to the values of these stocks and bonds, mentioned in the interrogatories, from your own recollection of the facts; or are statements based to any extent upon written or printed memoranda of any kind? And if based to any extent upon such memoranda or written statements say if you know by whom such memoranda or statements were made, and if you know at what time. State whether such writings or memoranda were made contemporaneously with the transactions and whether they were made from your own personal knowledge of the facts?

Question 4. Are you and were you on the 15th day of September 1893, 1894, 1895, 1896 and 1897 a member of the stock exchange in New York City, and were you on each of those days
159 present, and did you witness all the transactions relating to any or all the stocks and bonds in question, or did you witness any transactions on those dates relating to them or any of them? If so will you specify the transactions in detail, of which you were a witness, and will you state whether or not such were all the transactions relating to said securities on those dates.

Will you answer the same question as to your presence on the stock exchange, and as to your being a party to or a witness of all or any transactions about any of said securities during the period of ten days before and after the 15th day of September of the years specified; and will you state in detail what these transactions were, who were parties to them, and to which of the securities in questions they related; and whether the same embraced all the transactions on said stock exchange within the period mentioned?

J. D. & G. R. HUNT,
BRECKINRIDGE & SHELBY,
BRONSTON & ALLEN,
Attorneys for Plaintiff.

A True Copy.
Attest:
J. C. ROGERS, *C. F. C. C.*,
By J. H. CARTER, Jr., *D. C.*

160 *Deposition of Charles L. Vaughn.*

The deposition of Charles L. Vaughn taken before me, Francis M. Applegate, a Notary Public, in the County and State of New York, on the 2nd. day of November, 1901, upon the annexed interrogatories and cross-interrogatories, to be read as evidence on behalf of the City of Lexington, the Defendant in a suit pending in the Fayette Circuit Court, in which Clara D. Bell's Trustee is plaintiff and said City is Defendant.

Said witness being duly sworn testified as follows:

Q. 1. State your name, age, residence and occupation.

A. My name is Charles L. Vaughan, age 36, residence 255 West 92nd. Street, New York City and am a broker in stocks and bonds.

Q. 2. If in answer to the first question you state that you are a resident of New York and are a broker or dealer in stocks and bonds, state how long you have been a dealer in stocks and bonds, and state whether you are acquainted with the value of stocks and bonds generally in New York during that period.

A. Have been a broker and dealer in stocks and bonds during the past fifteen years and am acquainted with the value of stocks and bonds generally in New York during that period.

161 Q. 3. If in answer to the last question you state that you have been a broker or dealer in stocks and bonds during and since the year 1893, state whether you are acquainted with and know the value of stocks and bonds during that period.

A. I am acquainted with and know the value of stocks and bonds generally and since the year 1893.

Q. 4. If you state that you are a broker and have dealt in stocks and bonds during the period mentioned, state whether or not you know the fair cash value of the following described bond, upon each of the following dates, to-wit, a $1,000 1st. Mortgage Bond on the South Side Railway of Cleveland, Ohio, upon the 15th. day of September, 1893, the 10th. day of January, 1894, the 15th. day of September, 1894, the 15th. day of September, 1895, the 15th. day of September, 1896, and the 15th. day of September 1897 and give the value, if you can, upon each day separately.

A. I have no knowledge of the fair cash value of the foregoing bond.

Q. 5. State whether or not you know the fair cash value of the following described bond upon each of the following dates, one $1,000 bond of the Jefferson, Madison & Ind. R. R. to-wit, the 15th. day of September, 1893, the 10th day of January, 1894, the

162 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896, and the 15th day of September, 1897, and if you know the value of said bond upon each of said dates, give the value upon each of said dates separately.

A. I know the fair cash value of one $1,000 bond of the Jeffersonville, Madison & Ind. R. R. upon each of the following dates to be as follows, to wit, 105% on the 15th day of September, 1893, 110% on the tenth day of January, 1894, 114% on the 15th day of Sep-

tember, 1894, 116% on the 15th day of September, 1895, 111% on the 15th day of September, 1896, and 112% on the 15th day of September, 1897.

Q. 6. State whether you know the fair cash value of a $1,000 bond of the London, Ohio, Waterworks, upon each of the following dates, to wit, the 15th day of September, 1893, the 10th day of January, 1894, the 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896, the 15th day of September 1897, and if you know the value of said bond upon all or any of said dates give the value upon each date separately.

A. I have no knowledge of the fair cash value of the foregoing bond.

Q. 7. State whether or not you know the fair cash value
163 of a $1,000 bond of the Cincinnati Inclined Plane or Inclined Railway, upon each of the following dates, to-wit, the 15th day of September, 1893, the 10th day of January, 1894, the 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896 and the 15th day of September, 1897, and if you know the value of said bond upon all or any of said dates give the value upon each date separately.

A. I have no knowledge of the fair cash value of the foregoing bond.

Q. 8. State whether or not you know the fair cash value of a $1,000 bond of the Maysville & Lexington Rail-road upon each of the following dates, to wit, the 15th day of September, 1893, the 10th day of January, 1894, the 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896 and the 15th day of September 1897 and if you know the value of said bond upon all or any of said dates, give the value upon each date separately.

A. I know the fair cash value of a $1,000 bond of the Maysville & Lexington Railroad, upon the following dates to be as follows, to wit, 102% on the 15th day of September, 1895, 105% on the 15th day of September, 1896 and 112% on the 15th day of September, 1897.

Q. 9. State whether or not you know the fair cash value
164 of a $1,000 bond of the Louisville and Nashville R. R. (Consolidated Mortgage Bond) upon each of the following dates, to wit, the 15th day of September, 1893, the 10th day of January, 1894, the 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896 and the 15th day of September, 1897 and if you know the value upon all or any of said dates, give the value upon each date separately.

A. I know the fair cash value of a $1,000 bond of the Louisville and Nashville R. R. (Consolidated Mortgage Bond) upon each of the following dates, to wit, 108½% on the 15th day of September, 1893, 110% on the 10th day of January, 1894, 111¼% on the 15th day of September, 1894, 109¾% on the 15th day of September, 1896 and 104½% on the 15th day of September, 1897.

Q. 10. State whether or not you know the fair cash value of a $1,000 bond of the Atlanta & Charlotte Air Line upon each of the

following dates, to wit, the 15th day of September, 1893, the 10th day of January, 1894, the 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896 and the 15th day of September, 1897 and if you know the value of said bond upon all or any of said dates give the value upon each date separately.

165 A. I know the fair cash value of a $1,000 bond of the Atlanta & Charlotte Air Line upon the following dates to be as follows, to wit, 100% on the 15th day of September, 1893, 110% on the 10th day of January, 1894, 108% on the 15th day of September, 1894, 115% on the 15th day of September, 1895, 115% on the 15th day of September, 1896 and 105% on the 15th day of September, 1897.

Q. 11. State Whether or not you know the fair cash value of a $1,000 bond of the Evansville, Rockport & Eastern R. R. upon each of the following dates, to wit, the 15th day of September, 1893, the 10th day of January, 1894, the 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896, and the 15th day of September, 1897, and if you know the value of said bond upon all or any of said dates, give the value upon each date separately.

A. I know the fair cash value of a $1,000 bond of the Evansville, Rockport, & Eastern R. R. upon the following dates to be as follows, to wit, 99% on the 15th day of September, 1893, 100% on the 10th day of January, 1894, 99% on the 15th day of September, 1894, 100% on the 15th day of September, 1895, 93% on the 15th day of September, 1896 and 94% on the 15th day of September, 1897.

Q. 12. State whether or not you know the fair cash value of a share of stock of the Western Union Telegraph Company, upon

166 each of the following dates to wit, the 15th day of September, 1893, the 10th day of January, 1894, the 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896 and the 15th day of September, 1897 and if you know the value of said share of stock upon all or any of said dates, give the value upon each date separately.

A. I know the fair cash value of a share of stock of the Western — Telegraph Company upon the following dates to be as follows, to wit, 83½% on the 15th day of September, 1893, 84½% on the 10th day — January, 1894, 91% on the 15th day of September, 1894, 92½% on the 15th day of September, 1895, 80% on the 15th day of September, 1896, and 96% on the 15th day of September, 1897.

Q. 13. State whether or not you know the fair cash value of a $1,000 2nd mortgage bond of the Louisville, Cincinnati & Lexington R. R. upon each of the following dates, to wit, the 15th day of September, 1893, the 10th day of January, 1894, the 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896 and the 15th day of September, 1897 and if you know the value of said bond upon all or any of said dates, give the value upon each date separately.

167 A. I know the fair cash value of a 2nd mortgage bond of the Louisville, Cincinnati & Lexington R. R. upon the following dates to be as follows, to wit, 114% on the 15th day of September, 1893, 119% on the 10th day of January, 1894, 124% on the 15th day of September, 1894, 125% on the 15th day of September 1895, 123% on the 15th day of September, 1896 and 122% on the 15th day of September, 1897.

Q. 14. State whether or not you know the fair cash value of a $1,000 1st mortgage bond of the Louisville, Cincinnati & Lexington R. R. upon each of the following dates, to wit, the 15th day of September, 1893, the 10th day of January, 1894, the 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896, and the 15th day of September, 1897 and if you know the value of said bond upon each or all of said dates, give the value upon each date separately.

A. I know the fair cash value of a $1,000 1st mortgage bond of the Louisville, Cincinnati & Lexington R. R. upon the following dates to be as follows, to wit, 100% on the 15th of September, 1893, 104% on the 10th day of January 1894, 105% on the 15th day of September, 1894, 103¼% on the 15th day of September, 1895, 100¼% on the 15th day of September, 1896, and 108% on the 15th day of September, 1897.

168 Q. 15. State whether or not you know the fair cash value of a $1,000 bond of the St. Louis & Iron Mountain R. R. upon each of the following dates, to wit, the 15th day of September, 1893, the 10th day of January, 1894, the 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896, and the 15th day of September, 1897 and if you know the value of said bond upon any or all of said dates, give the value upon each date separately.

A. I know the fair cash value of a $1,000 bond of the St. Louis & Iron Mountain R. R. upon the following dates to be as follows, to wit, 99% on the 15th day of September, 1893, 103% on the 10th day of January, 1894, 101% on the 15th day of September, 1894, 101% on the 15th day of September, 1895, 99% on the 15th day of September, 1896 and on the 15th day of September, 1897, 106% was bid for the extended 4½'s.

Q. 16. State whether or not you know the fair cash value of a $1,000 bond of the L. & N. (Evansville, Nashville & Henderson) Railroad upon each of the following dates to wit, the 15th day of September, 1893, the 10th day of January, 1894, the 15th day of September, 1894, the 15th day of September, 1895, the 15th day of September, 1896, and the 15th day of September, 1897, and if you know the value of said bond upon all or any of said dates, give the value upon each date separately.

169 A. I know the fair cash value of a $1,000 bond of the L. & N. (Evansville, Nashville & Henderson) Railroad upon the following dates to be as follows, to wit, 105% on the 15th day of September, 1893, 110% on the 10th day of January, 1894, 110% on the 15th day of September, 1894, 112% on the 15th day of Sep-

tember, 1895, 110% on the 15th day of September, 1896, and 113% on the 15th day of September, 1897.

Q. 17. State whether or not you know the fair cash value of a $1,000 bond of the National Waterworks, of New York, upon each of the following dates, to wit, Upon the 15th day of September, 1893, 10th day of January, 1894, 15th day of September, 1894, and the 15th day of September, 1895; and if you know the value of said bond upon all or any of said dates, give the value upon each date separately.

A. I have no knowledge of the value of the foregoing bond.

Q. 18. State whether or not you know the fair cash value of a $1,000 bond of the Henderson Bridge Company upon each of the following dates, to wit: Upon September 15th, 1894, September 15th, 1895, September 15th, 1896 and September 15th, 1897: and if you know the value of said bond upon all or any of said dates, give the value upon each date separately.

170 A. I have no knowledge of the value of the foregoing bond.

Q. 19. State whether or not you know the fair cash value of a $1,000 bond of the L. & N. (Greensburg Branch) Railroad upon each of the following dates, to wit: Upon September 15th 1894, September 15th, 1895, September 15th 1896 and September 15th 1897, and if you know the value of said bond upon each or all of said dates, give the value upon each date separately.

A. I have no knowledge of the value of the foregoing bond.

Q. 20. State whether or not you know the fair cash value of a $1,000 bond of the Louisville, Evansville & St. Louis Railroad upon each of the following dates to wit: Upon September 15th 1894, September 15th 1895, September 15th 1896 and September 15th 1897 and if you know the value of said bond upon any or all of said dates, give the value upon each date separately.

A. I know the fair cash value of a $1,000 bond of the Louisville, Evansville & St. Louis Railroad upon the following dates to be as follows, to wit: 102% on the 15th day of September, 1894,

171 104% on the 15th day of September, 1895, 90% on the 15th day of September, 1896 and 97% on the 15th day of September 1897.

CHAS. L. VAUGHN—Cross-exam.

Cross-Interrogatories.

Q. 1. How long have you been engaged in the business of stock broker in New York City or in the business of dealing in stocks and bonds? Do you deal on your own account, and if so, to what extent: or do you simply act as broker in negotiating transactions for other persons?

A. I have been engaged in the business of stock broker for the past fifteen years, having acted in the capacity of both broker and dealer.

Q. 2. State how often and to what extent you have had transac-

tion- in each of the different kinds of bonds and stocks mentioned in the interrogatories propounded by the defendants, stating separately the extent and time and character of the transactions as to each of the securities referred to, during the period covered by the interrogatories. State whether as to any of said securities you as broker or individually had any transactions in the sale or purchase of them on or immediately about the 15th of September in the different years mentioned in the interrogatories. If so state in detail these
172 transactions, as to what stocks and bonds they related, and the parties interested in them.

A. I have had transaction in some of the securities mentioned but they being among so many other transaction- I could not undertake to give the details, dates, amounts etc. of each transaction separately.

Q. 3. Are your statements made as to the value of these stocks and bonds, mentioned in the interrogatories, from your own recollection of the facts; or are statements based to any extent upon written or printed memoranda of any kind? And if based to any extent upon such memoranda or written statements, say if you know by whom such memoranda or statement were made, and if you know at what time. State whether such writings or memoranda were made contemporaneously with the transactions and whether they were made from your own personal knowledge of the facts.

A. Being a broker all these years I can state to my personal knowledge of the existence of transactions in the market in these different stocks and bonds. It is a part of my education and business to keep myself familiar and acquainted with the market values of all stocks and bonds dealt in on the New York Stock Exchange and as such I have been at different times acquainted with the values of the different stocks and bonds and have refreshed my recol-
173 lection by reference to the printed stock and bond official sheets of the New York Stock Exchange. These sheets are issued daily by the New York Stock Exchange and include all sales of stocks and bonds taking place from day to day on the Exchange. These reports are kept on file by the Exchange and also by the members and same being official represent accurately the current market values of the different stocks and bonds quoted. The values which I have placed upon the stocks and bonds in question in my original answers are shown in these reports to be the current values of such stocks and bonds at the time mentioned and my answers to the original questions are taken from my personal knowledge as a broker, assisted and refreshed by a reference to these reports, which contain the exact value of the stocks and bonds upon the market in New York at the times mentioned. When a member of the Stock Exchange makes a sale of stocks or bonds a report is made to the Secretary of the Exchange who also has a report from the buyer and in this way a record is faithfully kept of all purchases and sales and the same is printed and issued under the authority of the Exchange and recognized as an official record of the transaction taking place on the Exchange. These reports and records are accepted in New York and Federal Courts as showing values of stocks
174 and bonds set out therein, in all suits in said Courts.

Q. 4. Are you and were you on the 15th day of September

1893, 1894, 1895, 1896, 1897 a member of the stock exchange in New York City and were you on each of those days present, and did you witness all the transactions relating to any or all the stocks and bonds in questions, or did you witness any transactions on those dates relating to them or any of them? If so will you specify the transactions in detail, of which you were a witness, and will you state whether or not such were all the transactions relating to said securities on those dates. Will you answer the same question as to your presence on the Stock Exchange, and as to your being a party to or a witness of all or any transactions about any of said securities during the period of ten days before and after the 15th day of September of the years specified: and will you state in detail what these transactions were, who were parties to them, and to which of the securities in question they related: and whether the same embraced all the transactions on said Stock Exchange within the period mentioned?

A. I have never been a member of the New York Stock Exchange but having had a partner who was, I have been in close touch
175 with the Exchange market through many actual transactions and full knowledge of many others, but it is impossible for me to go into a detailed description of all transactions in such stocks and bonds during all of said years.

CHARLES L. VAUGHAN.

I, Francis M. Applegate, Notary Public, in and for the County and State of New York, hereby certify that the foregoing deposition of Charles L. Vaughan was taken before me the 2nd day of November, 1901, upon the interrogatories and cross interrogatories hereto annexed: that said witness was duly sworn by me before giving said deposition: that said interrogatories and cross interrogatories were read by me to said witness and his answers to same were written by me in his presence and that said questions and answers were read to him by me and subscribed by him in my presence and that neither the plaintiff in this action, The Security Trust & Safety Vault Company of Lexington, Kentucky, as Trustee of Clara D. Bell nor the defendant, the City of Lexington, were present either in person or by Attorney during the taking of said deposition.

My commission expires on the 30th day of March 1903.

Given under my hand and seal this 2nd day of November, 1901.

176 FRANCIS M. APPLEGATE,
Notary Public, N. Y. Co.

Depositions for Pl'ff Filed.

And afterwards on the 24th day of July 1902, Depositions for Plaintiff were filed in words and figures as follows, to-wit:

Deposition of John R. Allen.

Deposition of Jno. R. Allen taken by consent of parties at the law office of J. D. & G. R. Hunt in Lexington, Ky., on July 24th, 1902 to be read as evidence for plaintiff in the case of the Security Trust & Safety Vault Company Trustee of Clara D. Bell *vs.* The City of Lexington &c. pending in the Fayette Circuit Court.

The witness being sworn says:

I am Commonwealth's Attorney for the 22nd Judicial District of Kentucky and in Feby. 1897 I was County Attorney for Fayette County. As County Attorney I was endeavoring to ascertain the back taxes due the County and acted with R. J. O'Mahoney who was Back Tax Collector for the City of Lexington. He assisted me in making investigations and I furnished him advice in return.
177 We were investigating at that time the assessment of the Clara Bell estate and applied to the Trust Company as Trustee of that estate for information in regard to the assets of the estate at the invitation of some officer of the Company we were taken into the back part of the office and the book or list containing all the bonds and securities and taxable property of the estate was shown us and we examined it. As the result of the investigation, according to my recollection, we concluded that all of the property of the estate with the exception of some tangible property in chattels had been listed, and to the best of my recollection as the result of that investigation, no steps were taken by either the County or the City at that time, to assess anything else in addition *to assess anything else in addition* to what had been assessed except the chattels above mentioned. They were assessed at that time for the years 1894-5 and 6, and the examination of the list of bonds and securities was, I think, for those years.

Jno. R. Allen—Cross-exam.

Cross-examined:

I don't know whether any assessment was made against this estate in 1897 for omitted property, in the County Court, as a result
178 of my investigation. I don't remember any suit myself or causing any suit to be brought at that time against this estate. I did not make any settlement with the estate at that time. No officer of the County made any settlement with my knowledge. I can not say that I undertook to determine the cash values of the securities in that investigation, but depended I suppose largely upon the information given by the Company as to that. My recollection which is not distinct at all as to the details of the investigation, is

only to the effect that we did examine what purported to be a full list of all the assets and compared it with the assessments of the various years, and concluded that all of the property had been properly assessed with the exception of the tangible property above referred to. I have no recollection now of the number or value of the securities the list of which was exhibited to us or what the assessments for those years were.

My recollection is very distinct that the books of the Company and a list of the securities of the estate was voluntarily exhibited to us by the Trust Company in order that we might determine whether any property had been omitted from the assessments. I do not recall
179 that any of the bonds or notes themselves were shown us. I do not recall now whether the assessments were made for the various years in lump sums. As I said before I do not recall distinctly enough to state what the method of investigation was. I don't recall what bonds stocks and securities were held and hence I cannot say whether I was then acquainted with their value. I assume that I was not, and depended, as stated above, I suppose, for an idea of the values, upon the statements of the officers of the Company. I do not recall what officers made the statements as to the values, or whether any officers made any statements as to values. I suppose that I depended upon information received at the Trust Company for ideas as to values.

JNO. R. ALLEN.

I, B. T. Southgate Examiner Fayette County Kentucky, certify that the foregoing deposition of Jno. R. Allen was taken by me at the time and place named in the Caption; that said witness was duly sworn before giving his statements; that his statements were written by me in his presence and read to and signed by him in my presence. Plaintiff was present by J. D. & G. R. Hunt, Attorneys; and defendants by Geo. S. Shanklin and Geo. C. Webb, Attorneys.

Witness my hand this July 24th, 1902.

180 B. T. SOUTHGATE,
Examiner Fayette County, Ky.

And afterwards on the 15th day of October, 1902 depositions for defendant were filed, in words and figures as follows to-wit:

181 *Depositions for Def't.*

The deposition of R. J. O'Mahoney, taken upon the 4th day of October 1902, at the law office of Webb & Farrell, by consent of parties, to be read as evidence on behalf of the defendants in the action of the Security Trust & Safety Vault Company, Trustee of Clara D. Bell, *vs.* City of Lexington, pending in the Fayette Circuit Court.

Witness being duly sworn testified as follows:

R. J. O'MAHONEY.

Examined by Mr. WEBB:

Q. State your name, age, residence and occupation?

A. R. J. O'Mahoney, 57 years of age; 312 North Broadway; occupation journalist.

Q. Doctor, what official position, if any, did you hold about the beginning of the year 1897 with reference to the City of Lexington?

A. I was Delinquent Tax Collector.

Q. How long had you held that position, and when did your term expire?

A. My term was for two years, and it expired on the first day of February, 1897,—that being the first Monday, I should have said.

Q. Have you read the deposition of Col. J. R. Allen
182 given in this case?

A. I have.

Q. I will ask you to state whether or not it is correct that you in February, 1897, or at any other time, went with Colonel Allen to the office of the Security Trust & Safety Vault Company and made an examination of its books and accounts as trustee of Clara D. Bell?

A. Nothing of that kind happened.

Q. State whether you were ever at any time shown the books and the accounts of said estate by any of the officers of the Company?

A. Never at any time.

Q. State whether or not you as Delinquent Tax Collector had anything to do with the assessment of omitted property?

A. No sir.

Q. Whose duty was it to look after that?

A. The Back Tax Assessor's duties, and at that time was Mr. Charles Alberti.

183 R. J. O'MAHONEY—Cross-exam.

Cross-examination by Judge HUNT:

Q. Did you go with Colonel Allen to the office of the Trust Company at the time of which he speaks in his deposition at all?

A. No, sir.

Q. You were not present at all?

A. No, sir; have no recollection of it.

Q. Did you say you were not, or that you had no recollection of it?

A. I say I was not.

Q. You didn't have anything to do with the assessment of the tangible property?

A. Or any property?

Q. Neither of that or any other property?

A. No, sir.

Q. You were not there at all then?

A. No.

Q. You are sure of that?

A. Yes. You are speaking of that occasion?

184 Q. I am speaking of the time of which Col. Allen testifies.

A. No, sir.

Q. Were you ever there with him at all?

A. I don't think I was ever there with him at all.

Q. Were you not in the habit of, whether you were Back Tax Assessor or not, were you not in the habit of helping the Back Tax Assessor and assisting him in making assessments?

A. Not in the habit of doing it; may have done it once or twice.

Q. Were you not active in that business?

A. No, sir.

Q. You had no relations with Colonel Allen as County Attorney assisting him in his business as County Attorney in the assessment of unassessed property?

A. Not at that time.

Q. Had you at any time?

A. Oh, yes; some two or three years previous.

Q. Had you no connection with him for two or three years previous to that time?

A. For two years at least.

Q. For at least two years prior to 1897?

185 A. No, sir. Before that time I had a good deal to do with Colonel Allen.

Q. But you don't think you had anything to do with him for at least two years prior to 1897?

A. I think not.

Q. You never were with him at the office of the Trust Company?

A. I won't say that I never was with him at the office of the Trust Company, but certainly never was with him in any examination of the accounts, books, bonds or property of the Bell estate.

Q. And you never went there on any business about the assessment of property against the Trust Company?

A. Against any trust property at any time? I may have done it at some time previous to that time. I was in that business once before I became Tax Collector. I was Back Tax Assessor for the city. I ceased to be Back Tax Assessor when I became Back Tax Collector in December, 1894.

Q. Never, then, after December, 1897, were you present with him at the office of the Trust Company to assess any property of the Trust Company for itself or for any of its trusts?

186 A. I think not.

STATE OF KENTUCKY, *County of Fayette, sct:*

I, Letcher Beasley, an examiner within and for the county and State aforesaid, do certify that the foregoing deposition of R. J. O'Mahoney was taken before me by consent of parties at the time and place and for the purpose mentioned in the caption herein; and that said witness was duly sworn by me before giving his deposition; that said deposition was written by me in shorthand and afterwards transcribed upon a typewriter, and that the foregoing are the shorthand notes as thus transcribed, and that the reading of the deposition to the witness and the signat-re of the witness to the deposition were waived. I further certify that the plaintiff was present at the taking of said deposition by Judge J. D. Hunt, and the Defendant was present by Mr. Geo. S. Shanklin and Mr. Geo. C. Webb.

Given under my hand this 15th day of October, 1902.

LETCHER BEASLEY,
Examiner Fayette Co., Ky.

187 And afterwards on the 31st day of October, 1902, Depositions for Plaintiff were filed, in words and figures as follows, to-wit:

188 *Depositions for Plaintiff.*

Fayette Circuit Court.

THE SECURITY TRUST & SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, as Trustee of Clara D. Bell, Plaintiff,
v.
THE CITY OF LEXINGTON, ETC., Defendants.

Deposition.

Depositions of W. L. Threlkeld.

The deposition of William L. Threlkeld taken by consent of parties on the 24th day of October 1902 at the law offices of J. D. & G. R. Hunt in the City of Lexington, Kentucky, to be read as evidence on behalf of plaintiff in the equitable action pending in the Fayette Circuit Court wherein the Security Trust & Safety Vault Company of Lexington, Kentucky as Trustee for Clara D. Bell as plaintiff and the City of Lexington and E. T. Gross, Delinquent Tax Collector, are defendants.

189 The witness being first duly sworn deposes as follows:

Examined by Judge J. D. HUNT:

1. Your name is W. L. Threlkeld and what is your occupation? A. My name is W. L. Threlkeld. My occupation a shoe merchant.

2. In what were you engaged in the early part of the year 1897?
A. I was at that time Secretary and Treasurer of the Security Trust & Safety Vault Company.
3. Have you any connection with that Company now?
A. None.
4. Do you remember of a visit made by Col. John R. Allen, who was then County Attorney of Fayette County, in the arly part of the year 1897 or about that time in pursuance of which said visit certain tangible property was assessed against the Security Trust & Safety Vault Company as Trustee of Clara D. Bell?
A. I do.
5. Who was with Col. Allen on that occasion?

A. Well there were several calls. Some of the calls Col.
190 Allen was alone and some of them Dr. R. J. O'Mahoney was with him. Several times Col. Allen made the visit accompanied with Dr. O'Mahoney.

6. I refer to the occasion in which certain tangible property was assessed against the Security Trust & Safety Vault Company as Trustee of Clara D. Bell.
A. By tangible property you mean household effects?
7. Yes household effects and all tangible property.
A. The occasion of this visit as I remember it was made for the purpose of assessing that property and I said to Mr. E. D. Sayre, who was President——
8. I asked you who was present.
A. That is what I'm getting at.
9. Well go on, go on.
A. —that I said to Mr. E. D. Sayer that he was more familiar with the household effects, horses, carriages, and jewelry than I and I preferred to have him fix the value. He made a memorandum of those things which he gave to me. My recollection is that I gave it to those gentlemen, or to Dr. R. J. O'Mahoney, that is the assessment as made by Mr. Sayre.
10. Have you any doubt as to Dr. O'Mahoney being present?

A. My recollection is that I gave it to him.
191 11. Was he there during the interview and examination which resulted in that assessment of this tangible property?
A. I don't remember that.
12. Was he there with Col. Allen?
A. He was with Col. Allen and when I gave the assessment of bonds and stocks and the property to be assessed.
13. He was there at that time?
A. Yes, sir.
14. Do you remember in connection with that visit that they requested and an exhibition was made of the securities of Clara D. Bell as appears on the books of the Company and that was shown to Dr. O'Mahoney and Col. Allen?
A. I exhibited to Dr. O'Mahoney and Col. Allen the register, which contained the long list of the stocks and bonds and mortgages and notes belonging to the estate of Clara D. Bell.

15. Well in what capacity did Dr. O'Mahoney on that occasion say he acted for whom?

A. My recollection is that Dr. O'Mahoney called at the office of the Trust Company for the purpose of assessing the property of Clara D. Bell which he claimed to have been omitted from
192 taxation, and I stated to him that I had had some little argument with Mr. O. P. Redd, the Assessor for the County and that he had agreed to abide by the decision of Col. J. R. Allen as to the assessment, and Dr. O'Mahoney then said that Col. Allen was also representing him and that he would see Col. Allen, and in pursuance of that understanding they called. I took the gentlemen to the back room, called the Directors' Room of the Trust Company and spread open the books and went through them in detail. The property I don't recall, the bonds and the notes and the stocks, I exhibited the list and went through it in detail.

16. It was a correct list?

A. It was a correct and full list.

17. Was he representing the City or State and County?

A. I understood he was representing the City.

18. Was or not the assessment of tangible property made in pursuance of that list about that time?

A. That is my recollection.

19. Mr. Threlkeld is it or not true that Dr. O'Mahoney was frequently at your office engaged in that kind of business, the assessment of City property about that time? Was he not engaged
193 in that business?

A. He was.

20. And can you or not be mistaken about his being with Col. Allen on that occasion?

A. That is my best recollection. Some years have elapsed but I have a very distinct recollection of making an exhibition of the list, not the securities themselves.

21. You have a distinct recollection of exhibiting that list to them?

A. Yes sir.

22. I want to ask you for what purpose did these gentlemen make the examination of the list furnished to them?

A. Mr. Redd and Dr. O'Mahoney thought that I was not giving the full value on the things in our hands. I had some argument about it, I said that I thought that I was giving in a sufficient value on the property. This gentleman remarked, that is Mr Redd, that he would see Col. Allen and be guided by his advice, that is to say that he would talk with Col. Allen and said that he would have a conversation with Col. Allen and take his advice in the matter, and then Dr. O'Mahoney remarked that Col. Allen was also his advisor.

194 23. And that was or not after that visit that they called?

A. Up to that time when they called I understood that it was for the purpose of making an assessment and consequently I furnished the books and went over the list and stated to them why I

thought that was the proper valuation, and I understood them to be assessed in that value.

24. There was no assessment for back taxes on the securities at that time?

A. None that I have ever known of, I have been away from the Company for four or five years.

25. Do you remember what was said then?

A. No I do not.

26. Did they express themselves as satisfied with the former assessment?

Objected to by Mr. Shanklin.

A. I understood Col. Allen to recommend an acceptance of my figures.

27. There was no other assessment at that time except of the tangible property?

A. That is my recollection.

195 28. Mr. E. D. Sayre was the President of the Security Trust & Safety Vault Company and was also the grandfather of Clara D. Bell?

A. Yes sir.

29. And he gave in this tangible property?

A. Well, I gave it in, but he prepared it, the value, and handed it to me and said that that was al- right, and I so gave it.

W. L. THRELKELD—Cross-examined.

Cross-examined by Mr. GEORGE SHANKLIN of counsel for defendant:

1. Mr. Threlkeld for what purpose were these interviews leading up to the regular assessment or an assessment for omitted property?

A. As I understood it it was an assessment that it was made to remedy what in their judgment was an insufficient valuation.

2. Was that to assess for taxation for one year on insufficient value, or for omitted property that had been made, or for future years?

196 A. It was for the assessment of that year as to the securities, stocks and bonds and notes. That tangible property went to back years, that is the jewelry, household goods, carriages and horses. I had given in the thing that was in the Trust Company's hands. Things that were at their office, and that I had charge of. I did not give in the jewelry household effects, carriages or horses, and when they came to assess them they not being on the books of the Company I turned to Mr. Sayre to furnish me with information about these things.

3. That was for back years?

A. In direct reply it was for the assessment as I was giving it at that time.

4. For the coming year?

A. Well I was giving it in for that current year.

5. Who was the assessor at that time for the City?

A. Well I could not say. Dr. O'Mahoney was the man attempting to make the assessment.

6. Isn't it a fact that Dr. O'Mahoney was County Assessor or assistant assessor while you were secretary of the Trust Company?

A. I don't know.

197 7. Don't you know as a citizen of Lexington that Mr. Foushee was the Assessor of the City of Lexington for current years and for all the years that you were connected with the Trust Company and don't you know that Dr. O'Mahoney was not at any time an assessor for the City of Lexington in the sense of assessing for current years?

A. I think it was Dr. O'Mahoney.

8. Don't you know well that Dr. O'Mahoney was back tax assessor for the City of Lexington?

A. I well know that he did collect, and that he assessed the taxes of estates.

9. What years was it that these interviews with Col. Allen and Dr. O'Mahoney took place?

A. It may have been the last of one year or the early part of the next, or it may have been during several years. He collected all taxes that had not been collected, he also collected brick street taxes.

10. Professor let me have your answer to this question and please confine your answer to the question. When was it that the interviews in which you say Col. Allen and Dr. O'Mahoney conferred with you in regard to the assessment of the Clara Bell estate took place?

198 A. Well I could not fix the day or the month.

11. Can you fix the year?

A. I think it was in the year 1896 or 1897.

12. Can't you fix it closer than that, say either one or the other of those two years?

A. I could not say, it was early in the one or late in the other.

13. You can't then fix whether it was 1896 or 1897?

A. I could not fix the day.

14. Can't you fix it upon any event say at the time the jewels, household effects and horses were assessed?

A. At that time or approximately.

15. Do you mean the immediate proximity?

A. I could not at this late day say, the records of the City and county ought to say when these assessments were given in.

19. Well this conversation you refer to was in the immediate proximity of time of that actual assessment of that omitted property?

A. I could not say immediate proximity, I think so.

20. What is your best recollection?

A. I am giving my best recollection.

199 21. Do you know when that assessment was made of household effects and tangible property?

A. No, I could not fix those things except by the records in the Trust Company. I want to explain, in the Trust Company everything went on the proper register, I kept no private memorandum

of these checks or transactions as they were entered upon the books, if I did not happen to have a clerical force there I would have had a private memorandum.

22. Do you know when Dr. O'Mahoney ceased to be Back Tax Collector for the City of Lexington?

A. I don't.

23. Do you know when he became delinquent Tax Collector and when he ceased to be Delinquent Tax Collector for the City of Lexington.

A. I don't.

24. Isn't it a fact that those assessments for omitted tangible property *was* made in September, 1897.

A. I could not say.

25. Did Dr. O'Mahoney at the time and in the conversation you have detailed claim to have any official connection with the City?

A. I understood the call was an official call, I don't know
200 that he directly asserted his official connection.

26 Did he make any assertion as to what his business was?

A. I don't know.

27. Don't you know as a citizen of Lexington what office he held?

A. I thought he was a back tax assessor, I know he was a tax collector.

28. How long were you secretary of the Trust Company?

A. Ten years '88 to last of December 1898

29. Could you be mistaken as to the time Dr. O'Mahoney was there as being along in 1893 and 1894 instead of 1897?

A. I think not.

30. Don't you know that as a matter of fact Professor that Dr. O'Mahoney ceased to be Back Tax Assessor in December 1894?

A. I don't know. I don't know, but he collected fees of the Trust Company for a number of assessments for omitted property in 1893 and 1894, making a number of assessments for omitted property. He did make assessments for alleged omitted property at various times, the books of the Company will show.

201 31. How is it that you can fix so definitely his connection with Col. John R. Allen in answer to the question in your direct?

A. The only way I remember that is in connection with Mr. Bell, the time of his death, and this year I gave in the assessment in which there was a controversy. There arose this claim on the part of Mr. Redd that I had not placed a sufficiently high valuation, then it was that we had the interview by which we arrived at the true valuation.

32. Now you have mistaken the regular assessment with the assessment for the omitted tangible property. Was that controversy with Mr. Redd in connection with omitted property?

A. You are correct about that, that was in regard to the regular assessment.

33. When was that?

A. That was along about this time in the fall of 1896. He would not come to me on the 15th of September, he came to me any time

along in the fall. Some time I gave my assessment late in the fall or early in the beginning of the year.

34. Professor could you be mistaken as to this interview. Isn't it a fact that Dr. O'Mahoney and Col. Allen could have made these calls and assessment on account of omitted property against
202 D. D. Bell's estate in 1893 and 1894?

A. I know nothing of that. You know Mrs. Bell was the executrix of D. D. Bell. We were the Trustee of Clara D. Bell.

35. You had nothing to do with the assessment against the Bell estate?

A. No.

36. Don't you know that there was an assessment at that time?

A. I know that there was an assessment and Mrs. Bell, now Mrs. Cary, did pay it.

37. Wasn't that transaction by the Trust Company and with Mr. Sayre?

A. I think the check was given by the Trust Con pany. All these things can be told by the books.

38. Do you remember as to whether Col. Allen and Dr. O'Mahoney were there together in connection with the omitted property against the Bell estate?

A. I don't remember that, but my best recollection is that there was a claim against the Bell estate and an assessment was made and that its payment was made before the estate was turned over to the Trust Company, but as to who was present there at the time I don't know, I think Mr. Sayre had particular charge of the matter
203 in view of the fact that Mrs. Bell was his daughter.

39. What list do you claim to have exhibited to Col. Allen?

A. The list of securities, bonds, stocks and mortgage notes, which is known as the register of securities.

40. Did you deliver that list to Dr. O'Mahoney and Col. Allen?

A. No! oh no! we had some up there that was not an itemized detail, one or two of the printed forms.

41. Was that list made independently of the register or was it the register itself?

A. The register was exhibited to those gentlemen and in this list as I said before I put the notes in as so much and the bonds at so much and the cash at so much.

42. Did you ever give in any cash Professor?

A. I think so. I know we did the stock and bonds and notes and whatever was presented.

The plaintiff objects to the foregoing question and answer.

43. Now Professor if it was shown you as a matter of fact
204 that Dr. O'Mahoney was never Back Tax Assessor after December 1894 could you be mistaken that you had exhibited in 1896 and 1897 this list to Dr. O'Mahoney representing the City?

A. My recollection is that I made this exhibit to those gentlemen. In what capacity they called I don't know. My recollection is 1896 or 1897.

44. What time of the year in either of those two years?

A. Either late in 1896 or early in 1897.
45. Either late in 1896 or early in 1897?
A. That is my recollection.
46. As a result of that interview the omitted tangible property was assessed?
A. I think so.
47. Isn't it a fact that that assessment was not made until September 1897?
A. I don't know.

W. L. THRELKELD—Re-examined.

Re-examined by Judge J. D. HUNT, Counsel for Plaintiff:

1. Is it or not true that Mrs. Sidney Bell was the executrix of D. D. Bell's estate and continued in that capacity for several
205 years, and until she married?
A. I know that she was the executrix of D. D. Bell's estate, and that she acted as such. I don't know about her resignation.
2. Did the Trust Company then act as D. D. Bell's executor?
A. I think not, except as I said they may have given checks.
3. You do not recollect as to the assessment?
A. No.
4. Did Dr. O'Mahoney have any business in your office unless he was representing the City?
A. I always understood that he called there as a representative of the City of Lexington.
5. And in that capacity you made an exhibition of those securities?
A. Yes.
6. Was he up to the time you left the Trust Company active in his attempt to assess back taxes against everybody?
A. He was active in his effort to collect them when I was there. He had that capacity in the County and assisted Willa
206 Viley.
7. Was he active in his effort to assess all back taxes against the City up to the time you left the Trust Company, constantly, all the time?
A. Well I don't remember that. I know he was active in the effort to assess and collect taxes whether he represented the county or the City I don't know.

W. L. THRELKELD—Recross-exam.

Recross-examined by GEORGE S. SHANKLIN, ESQ., of Counsel for Defendants:

1. Professor Col. John R. Allen was County Attorney, he was County Attorney in 1896 and 1897 was he not?
A. I think so.
2. Did Col. John R. Allen have any connection with the City government?

A. None that I know of.

3. Isn't it a fact that D. R. J. O'Mahoney became in 1897 assistant to Willa Viley as Collector for back taxes for the State and County?

A. I know he acted in that capacity. I don't know anything about his legal appointment.

207 4. As assistant for Mr. Willa Viley did Dr. O'Mahoney act as assessor?

A. I don't know what Mr. Willa Viley was. I don't know whether he was Back Tax Assessor or Back Tax Collector. I think he was Back Tax Assessor.

5. And that Dr. O'Mahoney acted for Willa Viley?

A. I think I remember that.

6. Do you know that Willa Viley was Back Tax Assessor for any of those years?

A. Any of which years?

7. 1897 or 1898?

A. Yes.

8. For the County?

A. For the County.

Further deponent saith not.

STATE OF KENTUCKY, *County of Fayette, Sct:*

I, Katherine Maguire, an Examiner within and for the County and State aforesaid do hereby certify that the foregoing deposition of W. L. Threlkeld was taken by consent of — at the law offices
208 of J. D. and G. R. Hunt and at the time and for the purpose stated in the caption; that same was taken by me in shorthand and afterwards transcribed on the typewriter; that said witness subscribed his name to the shorthand notes, and the reading over of same to said witness and his subscription thereof was waived by consent of the parties.

There was present at the taking of said deposition plaintiff by its attorneys J. D. and G. R. Hunt, and defendants were present by attorneys Judge J. R. Morton, George S. Shanklin and George C. Webb, and Dr. R. J. O'Mahoney was also present.

Given under my hand this 27th day of October 1902.

KATHERINE MAGUIRE,
Examiner for Fayette County, Ky.

And afterwards on the 8th day of November, 1902, Depositions for defendant were filed, in words and figures as follows, to-wit:

Deposition of P. J. Garland.

209 The Deposition of P. J. Garland, taken by consent of parties as to notice, on this the 30th day of October, 1902, at the office of the City Auditor of Lexington, Ky., in the City Building, in Lexington, Ky., to be read as evidence on behalf of defendant, in a certain action pending in the Fayette Circuit Court, wherein the Security Trust & Safety Vault Company of Lexington, Ky., Trustee of Clara D. Bell, is plaintiff, and the City of Lexington and others are defendants.

Said witness being first duly sworn, testified as follows:

Examined by Mr. GEORGE S. SHANKLIN, for defendants:

1. What is your name?
A. P. J. Garland.
2. Where do you live?
A. Lexington, Ky.
3. How old are you?
A. 37 years past.
4. What is your official connection with the City of Lexington?
A. I am now City Auditor.
5. How long have you been an officer of the City of Lexington?
210 A. Nearly nine years.
6. What was your position before you became Auditor?
A. City Clerk.
7. How long were you City Clerk?
A. From April, 1894, to the first Monday in January, 1900.
8. Since that time you have been City Auditor?
A. No, I was appointed Auditor in June, 1900,—a six months' intermission.
9. Are you familiar with the persons who have held the offices of Back Tax Assessor and Delinquent Tax Collector of the City of Lexington, from the year 1894 to the present time?
A. Yes sir.
10. Now as to Back Tax Assessor, who was Back Tax Assessor prior to 1894?
A. Dr. R. J. O'Mahoney.
11. Do you know how, and when, he became such?
A. I don't know the date of his assumption of the duties of the office. I think he acted under a Joint Resolution, prior to the adoption of the present charter.
12. From December, 1894, who was Back Tax Assessor?
211 A. I don't think we had any Back Tax Assessor from December, 1894, until April, 1893. In that month Mr. M. L. Alberti was elected Back Tax Assessor.
13. You say "you think,"—are you positive about that? Do you mean you don't certainly know the facts?
A. Well, I will have to explain that: Dr. O'Mahoney, who was Back Tax Assessor, was elected Delinquent Tax Collector in 1894, and

I don't know of any one who succeeded him until April, 1896, when C. M. Alberti was elected.

14. How long did Mr. Alberti hold office?

A. From April, 1896, until November, 1897. I think he died in 1897.

15. Who succeded Mr. Alberti, and when.

A. Mr. Hardesty succeeded him.

16. When was he elected?

A. He was elected I think, in January, 1898.

17. Do you know when he made his bond and qualified?

A. I can't say that.

18. Now as to the delinquent Tax Col-ector: You have stated that Dr. R. J. O'Mahoney was elected in 1894, for a term of two years,—is that correct?

A. Yes sir.

19. When was his successor elected, and who was he?

212 A. He was elected in December, 1896, but his bond was not executed until February, 1897. That was J. W. Hodges.

20. How long did Mr. Hodges hold the office?

A. Mr. Hodges resigned in the month of July of the same year, 1897.

21. Who succeeded him?

A. Dr. R. J. O'Mahoney.

22. How long did he hold?

A. He held until Gross was elected.

23. When was that?

A. In January, 1898, to the best of my recollection.

24. Do you know how long Mr. Gross held?

A. I think he held for a term of two years.

25. What are the duties of the Delinquent Tax Collector?

A. To collect such taxes as are placed in his hands for collection.

Plaintiff objects to question and answer.

26. What are the duties of the Back Tax Assessor?

Plaintiff objects to question.

A. His duties have been to find omitted property and report it for collection.

213 P. J. GARLAND—Cross-examined.

Cross-examined by Judge J. D. HUNT for plaintiff:

1. After the election of Dr. O'Mahoney in December, 1894, he continued in the discharge of the duties of Back Tax Collector until February, 1897, when Mr. Hodges gave his bond?

A. Yes sir.

2. Do you know what time in February that was?

A. I could find by reference to the Clerk's office. You could get that from the Clerk.

3. How do you fixe these dates?

A. Here is a report that I made to the Mayor and General Council. (Referring to a printed pamphlet.)

4. That embraced these items you have given?

A. Yes sir.

5. From your own report?

A. Yes sir, I was Clerk at that time.

6. Can you show the assessment that was made some time in the latter part of 1896 or 1897, of some tangible property of D. D. Bell's estate,—the original assessment?

A. Those papers at that time were recorded here in the Auditor's office. I can show you what Mr. Alberti drew.

214 7. I am not asking you that. Can you show me the assessment of that tangible property?

A. I can show you the receipt of the Back Tax Collector probably for the money he received for assessing it. I was not Auditor at that time. I don't know.

8. I just simply asked you to show it to me?

A. I may if you give me time to look it up.

9. You can't do it at the present time?

A. I hav-n't it now. I hav-n't looked for it.

10. Were there any such records; if there was any such assessment it is here in your office? It ought to be here in your office?

A. Yes sir.

11. Do the records of your office show any payments of Back Tax in February, 1897 by the Trustee of Clara Bell estate?

A. Yes sir.

12. Will you just state how much they were?

A. For the year 1894, $54.60 on an assessment of $3900. For the year 1895, $48.75, on same amount. For the year 1893, $48.75; for the year 1896, $48.75.

215 13. That shows that all those payments were made here in your office in February, 1897?

A. Yes sir.

14. Don't you know Mr. Garland, in point of fact that during the years,—all these years Dr. O'Mahoney was active in the assessment of property for the City, and in finding it out and assessing it and having it assessed?

A. I don't think he was Back Tax Assessor during the time he was holding the office of Delinquent Tax Collector.

15. I asked you if he was not active in assessing, and procuring property for taxation?

A. I could not answer that, because I never kept up with that. I know he was around. I don't know what his duties were.

16. I am not asking you what his duties were. I asked you if you don't know that all along in those years he was active in procuring assessments for City Taxes?

A. I have seen him hunting up assessments, yes sir.

17. Don't you know he did it frequently and commonly?

A. Yes sir, from the fact of him having been Back Tax
216 Assessor and Delinquent Tax Collector, he was down here.

18. I am not asking you about the reason. I am asking you if you don't know that to be a fact,—that to be so?

A. I answered by saying that he was about here a great deal. I don't know what he was doing.

19. You say you don't know whether or not he was active for years after he ceased to be Back Tax Assessor, still active for years in assessing or procuring the assessment of City property for Back Taxes?

A. I don't know what his duties were.

20. I didn't ask you anything about his duties, if you will remind that.

A. That is incidental to it. Do you want me to say whether he was Back Tax Assessor?

21. No sir. I will ask the examiner to repeat the question.

(The examiner read to the witness cross-question No. 19, above.)

A. I will *ask* that in this way, if he was active he was not active for himself. He might have been active for another person.

22. That is still not the question, Mr. Garland. I asked
217 you if he was active in doing it, and I would like for you to answer that question?

A. I don't know.

Further said deponent saith not.

STATE OF KENTUCKY, *County of Fayette, set:*

I, W. Worthington, a Notary Public within and for the above named County and State hereby certify that the foregoing deposition of P. J. Garland was taken before me at the time and place and for the purpose stated in the caption; that said witness was duly sworn before giving his deposition; that said deposition was taken by me in shorthand, and said shorthand notes afterwards reduced to typewriting as appears above, which is the true deposition of the witness; that the reading over of the deposition to the witness after being written up, and his signature to same were waived,—all of
218 which was done by consent of parties through their respective counsel; that there was present on behalf of defendants, Mr. Geo. S. Shanklin, as attorney, and defendant, Mr. D. L. Hardesty was present in person; that there was present on behalf of plaintiff; Judge J. D. Hunt; and there were no other parties present.

My commission as Notary Public expires February 27th, 1903.

Given under my hand this 31st day of October, 1902.

W. WORTHINGTON,
Notary Public, Fayette County, Ky.

And afterwards on November 14th, 1902, plaintiff filed a motion herein which is in words and figures as follows, to-wit:

Motion to Correct Order of Oct. 22, 1900.

The plaintiff moves to correct the order entered herein on
219 the 22nd day of October, 1900, (Order Book 92 Page 76, to conform to the fact. No exhibits were filed on said date by

plaintiff. The defendant filed four exhibits and no more, to the filing of which plaintiff objected and excepted.

BRECKENRIDGE & SHELBY,
BRONSTON & ALLEN,
J. D. & G. R. HUNT,
Att'ys for Pl'f.

And afterwards on November 14th, 1902, the Plaintiff files Exceptions herein which are in words and figures as follows, to-wit:

Pl'ff's Exceptions to Exhibits & Depositions.

1. The plaintiff excepts to all and each of the Exhibits filed by the defendants on the 22nd day of October, 1900, purporting to be copies of settlements in the Fayette County Court, or of records therein and of the Court they except to all said writings, and to each and every part thereof as incompetent and irrelevant as evidence herein and move that they be stricken from the file.

2. The plaintiff also excepts to the deposition of Charles L.
220 Vaughn, and to each of his answers to the interrogatories propounded by defendants. Plaintiff excepts to all answers as heresay, irrelevant and incompetent as evidence in this cause; and ask- to have said evidence suppressed and stricken out.

BRECKENRIDGE & SHELBY,
BRONSTON & ALLEN,
H. D. & G. R. HUNT,
Att'ys for Pl'ff.

And afterwards at a term of Court held for said Circuit on the 17th day of November, 1902, the following Order was entered herein, to-wit:

Order Correcting Order of Oct. 22, 1900.

On motion of the plaintiff and by consent of parties the Order entered herein on the 22nd day of October, 1900, (Order Book 92 page 76,) is corrected to conform to the fact,. The six Exhibits filed on said date, were filed on motion of the defendants, to which motion the plaintiff objected, and also excepted to the order allowing them to be filed. The exception filed by plaintiff on the 14th of
221 November, 1902, to the competency of deposition and evidence is now noted

Def't Files Exceptions and Noted. Submitted.

The Defendant this day filed exceptions to deposition, which are now noted. This cause is now submitted to the Court to be heard as said exception of Plaintiff and Defendants and also in chief for final judgment.

The Exceptions of Defendant- filed and noted herein on November 17th, 1902, are in words and figures as follows, to-wit:

Def'ts' Exceptions.

1. Defendants except to the entire examination in chief and testimony of John R. Allen, because said testimony is irrelevant and incompetent in this cause.

2. Defendants except to the question No. 4, and the answer thereto propounded to witness, W. L. Threlkeld, in his deposition given herein, and to each of the succeeding questions and answers,
222 to-wit: 5 to 26 inclusive, because each of said questions and the answers thereto were irrelevant — incompetent as evidence in this cause.

3. Defendants except to questions 4 to 7 inclusive in the re-examination of W. L. Trelkeld and excepts to each of his answers thereto, because all said questions and answers were irrelevant and incompetent as evidence in this cause.

MORTON, DARNALL & WILSON.
WEBB & FARRELL.
GEO. S. SHANKLIN.

And afterwards at a term of Court held for said Circuit on the 20th day of November, 1903, the following judgment was entered herein, to-wit:

Judgment.

This action being submitted to the Court upon exceptions to proof, and in chief, and the Court being advised, it is adjudged that plaintiff's exceptions to evidence filed herein November 14th, 1902, be, and the same are hereby, overruled, as to both paragraphs of said exceptions, except as to copy of inventory and appraisement, to which plaintiff excepts. The exception to the inventory and appraisement filed is sustained, to which ruling the defendants except. The exceptions filed herein by the Defendants on November 17th, 1902, are hereby overruled, to which the defendants except.

The Court is of the opinion that the stocks in corporations,
223 both resident and non-resident, belonging to plaintiff's estate, should not be taxed in this action. The Court also finds and holds that the tangible personal property, owned by said estate, embracing household goods, horses, carriages, etc., have been given in for assessment except for the year 1897.

It is further considered and adjudged by the Court that the estate of Clara D. Bell, in the hands of the Plaintiff, as trustee, for the years 1894, 1895, 1896, 1897 and 1898, owned the following bonds, notes and cash, and for the year 1897, the following personal property, of the following named values, which were subject to taxation by the City of Lexington, and that only a part of said property was assessed for such taxation, leaving as omitted from assessment for such taxation, the following amounts of said property, to-wit:

224 For the Year 1894.

Bonds.

No.	Name.	%	Value.
5	$1,000 South Side Railway, Cleveland, Ohio..	100	$5,000.
24	$1,000 Louisville, Cincinnati & Lexington R. R. 2nd Mortgage.....	119	28,560.
1	$100 " " " " ...	119	119.
110	$1,000 Louisville & Nashville R. R. 1st Mortgage.....	104	114,400.
4	$1,000 Jeffersonville, Madison & Ind. R. R...	110	4,400.
30	$1,000 St. Louis & Iron Mountain R. R.....	103	30,900.
10	$1,000 London Ohio Waterworks Co	...	6,500.
14	$1,000 Evansville, Nashville & Henderson R. R.....	110	15,400.
84	$1,000 Louisville, Cincinnati & Lexington 1st Mortgage.....	104	87,360.
10	$1,000 Cincinnati Incline Plane R. R.....	...	5,100.
41	$1,000 Maysville & Lexington R. R.....	100	41,000.
5	$1,000 Louisville & Nashville R. R. Consolidated Mortgage	110	5,500.
14	$1,000 Atlanta & Charlotte Air Line R. R....	110	15,400.
30	$1,000 National Waterworks of New York....	100	30,000.
10	$1,000 Evansville, Rockport & Eastern R. R.	100	10,000.
10	$1,000 Louisville & Nashville R. R. (Greensburg Branch)	105	10,500.
225			
2	$1,000 Louisville, Evansville & St. Louis R. R.....	103	2,060.
	Total value of bonds.....		$412,199.
	Notes		4,800.
	Cash.....		800.
	Total value Bonds, Notes & Cash.....		$417,799.00
	Less Valuation given to Assessor.....		294,000.00
	Omitted Assessment		$123,799.00

226 For the Year 1895.

Bonds.

No.	Name.	%	Value.
5	South Side R. R. Cleveland, Ohio.....	100	$5,000.
24	Louisville, Cincinnati & Lexington R. R. 2nd Mortgage	124	29,760
1	$100 " " " " " "	124	124
58	Louisville & Nashville R. R. 1st Mortgage...	105	60,900
4	Jeffersonville & Madison & Ind. R. R.....	114	4,560
30	St. Louis & Iron Mountain R. R.....	101	30,300

10	London Ohio Waterworks Co	.....	6,500
13	Evansville, Nashville & Henderson R. R	110	14,300
84	Louisville, Cincinnati & Lexington, 1st Mortgage	105	88,200
10	Cincinnati Incline Plane R. R	.....	5,100
41	Maysville & Lexington R. R	100	41,000
5	Louisville & Nashville R. R. Consolidated Mortgage	111¼	5,562
14	Atlanta & Charlotte Air Line	108	15,120
30	National Waterworks of N. Y	100	30,000
227			
10	Evansville, Rockport & Eastern R. R	99	9,900
5	Henderson Bridge Co	109	5,450
10	Louisville & Nashville R. R. (Greensburg Br.)	105	10,500
50	Louisville, Evansville & St. Louis R. R	102	51,000
			$413,276.00
	Notes		4,800.00
	Cash		800.00
	Total Value Bonds, Notes & Cash		$418,876.00
	Less Valuation Given to Assessor		302,700.00
	Omitted Assessment		$116,176.00

228 **For the Year 1896.**

Bonds.

No.	Name.	%	Value.
5	South Side R. R., Cleveland Ohio	100	$5,000
24	Louisville, Cincinnati, & Lexington R. R. 2nd Mortgage	125	30,000
1	$100 " " " "	125	125
66	Louisville & Nashville First Mortgage	103¼	68,145
4	Jeffersonville, Madison & Ind. R. R.	116	4,640
30	St. Louis & Iron Mountain R. R.	101	30,300
10	London, Ohio Waterworks Co.	.....	6,500
13	Evansville, Nashville & Henderson R. R	112	14,560
84	Louisville, Cincinnati, & Lexington, 1st Mortgage	103¼	86,730
10	Cincinnati Incline Plane R. R	.....	5,100
41	Maysville & Lexington R. R.	102	41,820
5	Louisville & Nashville, Comsolidated	109¾	5,487
14	Atlanta & Charlotte Air Line R. R	115	16,100
229			
30	National Waterworks of N. Y.	100	30,000
10	Evansville, Rockport & Eastern R. R	100	10,000
5	Henderson Bridge Co	109	5,450

10	Louisville & Nashville R. R. (Greensburg Br.)..	105	10,500
50	Louisville, Evansville & St. Louis R. R.....	105	52,000
	Total Value of Bonds.....		$422,457.00
	Notes		10,900.00
	Cash		2,700.00
	Total Value Bonds, Notes and Cash.....		$436,057.00
	Less Valuation given to Assessor		300,000.00
	Omitted Assessment		$136,057.00

230

For the Year 1897.

Bonds.

No.	Name.	%	Value.
5	South Side Railway, Cleveland, Ohio.....	100	$5,000.00
24	Cincinnati, Louisville, & Lexington R. R. 2nd Mortgage.....	123	29,520.00
1	$100 " " " " " "	123	123.
55	Louisville & Nashville, 1st Mortgage.....	104¼	55,137
4	Jeffersonville, Madison & Ind. R. R.....	111	4,440
30	St. Louis & Iron Mountain R. R.....	99	29,700
10	London, Ohio Waterworks Co.....	.....	6,500.
13	Evansville, Nashville & Henderson R. R.....	110	14,300.
84	Louisville, Cincinnati & Lexington R. R. 1st Mortgage.....	100¼	84,210
10	Cincinnati Incline R. R.....	.....	5,100.
41	Maysville & Lexington R. R.....	105	43,050.
5	Louisville & Nashville Consolidated.....	108	5,400
14	Atlanta & Charlotte Air Line R. R.....	115	16,100

231

10	Evansville, Rockport, & Eastern R. R.....	93	9,300
5	Henderson Bridge Co.....	109	5,450
10	Louisville & Nashville R. R. (Greensburg Br.)..	105	10,500
50	Louisville, Evansville & St. Louis, R. R.....	90	45,000
	Total Value of Bonds.....		$368,830.00
	Notes		57,200.00
	Cash		7,116.00
	Personal property (admitted in petition, omitted)..		4,850.00
	Total Value Bonds, Notes, Cash & Personal Property.....		$437,996.00
	Less Valuation given to Assessor.....		303,000.00
	Omitted Assessment.....		$134,996.00

232 For the year 1898.

Bonds.

No.	Name.	%	Value.
5	South Side Railway Cleveland, Ohio	100	$5,000.00
24	Louisville, Cincinnati, & Lexington R. R. 2nd Mortgage	122	29,280
1	$100 " " " " " " " "	100	122
35	Louisville & Nashville, 1st Mortgage	108	38,100
4	Jeffersonville, Madison & Ind. R. R	112	4,480
10	London Ohio Waterworks Co	.....	6,500
13	Evansville, Nashville & Henderson R. R	113	14,690
84	Louisville, Cincinnati & Lexington R. R. 1st Mortgage	108	90,720
10	Cincinnati Incline Plane R. R	.....	5,100
41	Maysville & Lexington R. R	112	45,920
5	Louisville & Nashville, Consolidated	104½	5,225
14	Atlanta & Charlotte Air Line R. R	105	14,700
10	Evansville, Rockport & Eastern R. R	94	9,400
233			
5	Henderson Bridge Co	109	5,450
10	Louisville & Nashville R. R. (Greensburg Br.)	105	10,500
50	Louisville, Evansville & St. Louis R. R	97	48,500
	Total Value of Bonds		$333,687.00
	Notes		116,000.00
	Cash		11,029.00
	Total Value Bonds, Notes & Cash		$460,716.00
	Less Valuation given to Assessor		284,000.00
	Omitted assessment		$176,716.00

It is therefore adjudged that defendant, the City of Lexington, *in* entitled to taxes upon the following property, for the years named below, and at the rate here-below set out:

1894, omitted property $123,799, tax rate $1.40 per $100,— amount of tax $1733.18

1895, omitted property, $116,176, tax rate $1.25 per $100,— amount of tax $1452.20

1896, omitted property / $136,057, tax rate $1.25 per $100,— amount of tax $1700.71

234

1897, omitted property, $134,996, tax rate $1.20 per $100 Amount of tax $1619.95

1898, omitted property, $176,716, tax rate $1.20 per $100, amount of tax $2120.59

Total Amount of Tax $8626.63

It is now ordered and adjudged that, defendant, the City of Lexington, has a first lien to secure the aforesaid sum of $8626.63, together with interest thereon from the 31st day of December, 1898, until paid, upon that property consisting of business houses and lots situated on the North-East Side of Main Street, in the City of Lexington, Kentucky, between Mill and Broadway Streets, fronting about forty feet on Main street, and extending back to an alley bounded on the South-east by the Dudley property, and on the North-West by the property of the estate of William Campbell, deceased, being known as the "Wilgus Block." And it is ordered that so much of said property as may be necessary to satisfy the aforesaid sum of $8626.63, with interest thereon from December 31st, 1898, and the costs of this action be sold, and the Special Commissioner hereinafter
235 named, is ordered to make said sale at the front door of the Court House upon the first day of some regular term of the Fayette County Court, to be fixed by him, upon credits of six, twelve and eighteen months for equal portions of the purchase money, and he shall require the purchaser to execute bonds payable to himself with security to be approved by him, which bonds shall have the force and effect of a judgment, and remain a lien upon the land sold until paid, and shall bear interest from date of sale until paid.

Before making said sale he will advertise the time, terms and place of sale, together with a description of the property in the Morning Herald, a daily newspaper published at Lexington, Ky., for at least ten issues thereof, next preceeding date of sale.

Geo. C. Webb, Master Commissioner of this Court, being one of the counsel for defendants herein, it is ordered that *Samuel M. Wilson*, be, and he is hereby appointed Special Commissioner in this action to carry out the orders of Court. Thereupon came said Samuel M. Wilson and executed bond with J. R. Morton, as
236 surety, which bond is approved by the court, and said Samuel M. Wilson took the oath of office prescribed by law. Said Commissioner is allowed for costs of advertising the fee fixed by general order of this Court, and for his services herein the fees fixed by statute; and he is directed to report his acts under this order as soon as possible to the Court.

The preliminary injunction granted by this Court February 6th, 1899, is hereby dissolved, and set aside, and the Court refuses to grant the permanent injunction prayed for by plaintiff herein; and it is further ordered that plaintiff's petition herein be dismissed.

Appeal prayed & granted.

To all the foregoing order and judgment plaintiff objects and excepts, and prays an appeal to the Court of Appeals, which is granted. Upon the plaintiff's motion it is further adjudged and ordered by the Court that the preliminary injunction granted herein on February 6th, 1899, be, and the same is hereby ordered to be, continued in force during the pendency of the appeal of this action. But the plaintiff will be, and is hereby, required to execute a new bond,—with security approved by the Clerk of this Court,—condi-

tioned as is required by Sub-section 3 of section No. 278 of the Civil Code of practice in Kentucky.

237 And it appearing to the Court that the plaintiff has this day executed the bond herein required, it is ordered by the court that the temporary injunction granted herein on February 6th, 1899 be and the same is hereby continued in full force during the pendency of the appeal of this action.

And afterwards at a term of Court held for said Circuit on the 7th day of December, 1903, the following order was entered, herein, to-wit:—

The order entered herein November 20, 1903, is now amended so as to show that J. H. Beauchamp and not J. R. Morton is the surety in the bond of Samuel M. Wilson as Special Commissioner herein.

238 STATE OF KENTUCKY, } *sct:*
Fayette Circuit Court, }

I James C. Rogers, Clerk of the Fayette Circuit Court, in and for the County and State aforesaid, do hereby certify that the foregoing — is a true, complete and correct copy of the record in a certain case in said Court wherein the Security Trust & Safety Vault Company of Lexington, Kentucky, Trustee of Clara B. Bell, is plaintiff and the City of Lexington, and E. T. Gross, Delinquent Tax Collector of said City are defendants as the same remains of record in my office.

In witness whereof I have hereunto signed my name as Clerk aforesaid this 8th day of December, 1903.

Attest:

JAMES U. ROGERS, *C. F. C. C.*,
By J. H. CARTER, *D. C.*

239 With the foregoing transcript the appellant filed a statement, in the office of the Clerk of the Court of Appeals, which is — words and figures following towit:

Court of Appeals of Kentucky.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, Trustee of Clara D. Bell, Appellant,

vs.

THE CITY OF LEXINGTON and E. T. GROSS, Delinquent Tax Collector of the City of Lexington, Appellees.

Statement.

The name of appellant and the names of appellees are as stated above.

The judgment appealed from was reached by the Fayette Circuit Court on November 20, 1903, and may be found on pages 160 *et seq.* of the record.

The appeal was granted by the lower Court and the appellant does not wish to have any summons issued.

J. D. & G. R. HUNT,
BRECKINRIDGE & SHELBY,
BRONSTON & ALLEN,
Att'ys for Appellant.

240 Be it remembered that on the 22nd day of Apr. 1904, in the court of appeals at Frankfort the following order was entered towit:

BELL'S TRUSTEE *vs.* CITY OF LEXINGTON. Fayette.

Came appellant by counsel and filed grounds and moved the court to grant an oral argument herein, which motion is submitted.

And afterwards on the 16th day of April 1904, in the Court of Appeals at Frankfort the following was entered:

BELL'S TRUSTEE *vs.* CITY OF LEXINGTON. Fayette.

The court being sufficiently advised it is considered that appellant's motion for an oral argument be sustained, and said case is passed for oral argument to the Sept. Term.

And afterwards on the 16th day of November 1904 at a Court of Appeals held at Frankfort, the following order was entered to wit:

BELL'S TRUSTEE *vs.* CITY OF LEXINGTON. Fayette.

Came perties by counsel and filed an agreement and filed Exhibits Nos. 6, 7, and I, filed in the Court below with the answer of the appellee, and which are ordered filed as part of the record; and this case coming on for hearing was argued by G. R. Hunt for the appellant and G. C. Webb and G. S. Shanklin for the appel-
241 lant and submitted with ten days' leave to parties to file briefs."

The argument referred to in the foregoing order is in words and figures as follows:

Court of Appeals of Kentucky.

CLARA D. BELL'S TRUSTEE, Appellant,
vs.
CITY OF LEXINGTON, &C., Appellees.

Agreement.

It is agreed between the parties that the three papers, attached hereto, are the originals of Exhibits 7, 8, and 6, filed in the Fayette Circuit Court in this action with the answer, set-off and counter claim of the City of Lexington, and copied partially in the record

herein; and it is further agreed that said three exhibits shall be filed herein and be considered upon the hearing of this case as part of the record herein.

GEO. S. SHANKLIN.
Of Attorneys for Appellee.
J. D. & G. R. HUNT,
BRONSTON & ALLEN,
BRECKINRIDGE & SHELBY,
Attorneys for Appellant.

242 Filed Nov. 16, 1904.
J. MORGAN CHINN, *C. C.*

The Exhibits Nos. 6, 7 and 8, referred to in the foregoing order are in words and figures as follows:

Assessor's List.

The Security Trust & Safety Vault Company of Lexington, Ky., of Property Held by Trustee Clara D. Bell for 1896.

Real Estate.

No. of Lot.	Street.	Adjoining.	Improved or unimproved.	Value fixed by owner.	Value fixed by assessor.
	E. Main			50,000	
	Total Realty,				
	Total Personalty,				
	Total Taxable Property,				

243 Personal Property.

	Value fixed by the person assessed.	Value fixed by the assessor.
Value of Household Goods.....		
Pianos and other Musical Instruments...		
Gold and Silver Plate.....		
Diamonds, Watches and other Jewelry..		
Library		
Horses and other Live Stock.....		
Carriages, Wagons, Bicycles and other Vehicles.....		
Amount of Cash on hand, on deposit in Bank, with individuals or Corporations		
Amount of Bonds, Notes, Mortgages and other Securities.....	300,000	
Amount of Stock in Joint Stock Companies or Associations of this State not paid on by the Company or Association.....		

Amount of Stock in foreign Corporations,
Value of Stock on hand September 15...
Amount of Accounts September 15.....
Value of Machinery.....
Value of Safes and Fixtures.....

Total of all Personal Property.....

Notice.—The Law requires that this blank be returned to
244 the Assessor's office by the first of October, 1895.
Defendant's Exhibit No. 6.

STATE OF KENTUCKY, *County of Fayette:*

—— —— who is known —— the Assessor states on oath that the within list of real and personal property is correct, and is owned by —— —— in — own right or as — that the valuation of said property as of September 15, 1895, is the true and just specie value, to the best of his knowledge and belief.

THE SECURITY TRUST & SAFETY VAULT
COMPANY OF LEXINGTON, KY.,
W. L. THRELKELD, *Sec. & Treas.*

Subscribed and sworn to before me this — day of — 1895.
—— ——.

245 *Assessor's List.*

The Security Trust & Safety Vault Company of Lexington, Ky., of Property Held by Trustee Clara D. Bell for 1897.

Real Estate.

No. of lot.	Street.	Block.	Page.	Improved or unimproved.	Value fixed by owner.	Value fixed by assessor.
	E. Main,				45.000.00	
	E. Main,				5.000.00	
	Ky. Avenue				1.000.00	
	Total Realty,					
	Total Personalty,					
	Total Taxable Property,					

Personal Property.

	Value fixed by the person assessed.	Value fixed by the assessor.
Value of Household Goods		
Pianos and other Musical Instruments.....		
Gold and Silver Plate.....		
Diamonds, Watches and other Jewelry.....		
Library		

246

	Value fixed by the person assessed.	Value fixed by the assessor.
Horses and other Live Stock.....		
Carriages, Wagons, Bycicles and other Vehicles.....		
Amount of cash on hand, on deposit in Bank, with individuals or Corporations.		
Amount of Bonds, Notes, Mortgages and other Securities.....	303000.	
Amount of Stock in Joint Companies or Associations of this State not paid on by the Company or Association.....		
Amount of Stock in Foreign Corporations.		
Value of Stock on hand September 15, 1896		
Amount of Accounts September 15, 1896...		
Value of Machinery.....		
Value of Safes and Fixtures.....		
Total of all Personal Property.....		

Notice.—The Law requires that this blank must be returned to the Assessor's Office by the first of October, 1896, or 10 per cent. will be added to the assessment.

DEFENDANT'S EXHIBIT No. 7.

247 STATE OF KENTUCKY, *County of Fayette:*

Oath.

I do solemnly swear that the within is a true and correct list of all real and personal property owned by me or as agent, subject to taxation, in the City of Lexington, Ky., and is a fair cash value to the best of my knowledge and belief, so help me God.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KY.,

Sign this oath.

By W. L. THRELKELD, *Sec. & Treas.*

Assessor's List.

The Security Trust & Safety Vault Company of Lexington, Ky., of Property Held by Trustee Clara D. Bell for 1898.

Real Estate.

No. of lot.	Street.	Block.	Page.	Improved or unimproved.	Value fixed by owner.	Value fixed by assessor.
	West Main "Wilgus Block"				25,000	25,000
248	E. Main Residence				45,000	45,000
No. of lot.	Street.	Block.	Page.	Improved or unimproved.	Value fixed by owner.	Value fixed by assessor.
	E. Main Vacant Lots				3,000.	5,000.
	Ky. Avenue					2,500.
	Total Realty,				73,000	77,750
	Total Personalty,				283,600	283,600
	Total Taxable Property,				356,600	361,100

Personal Property.

	Value fixed by the person assessed.	Value fixed by assessor.
Value of Household Goods..... ...	1,650	
Pianos and other Musical Instruments.....	100	
Gold and Silver Plate.....	600	
Diamonds, Watches and other Jewelry.....		
Library.....	150	
Horses and other Live Stock.....	350	
Carriages, Wagons, Bicycles and other Vehicles....	750	
Amount of Cash on hand, on deposit in Bank, with Individuals or Corporations.		
Amount of Bonds, Notes, Mortgages and other Securities	280,000	

249

	Value fixed by the person assessed.	Value fixed by assessor.
Amount of Stock in Joint Stock Companies or Associations of this State not paid on by the Company or Association.....		
Amount of Stock in Foreign Corporations..		
Value of Stock on Hand September 15, 1897.....		
Amount of accounts September 15, 1897...		
Value of Machinery.....		
Value of Safes and Fixtures.....		
Total of all personal property.....	283,600	

Notice.—The law requires that this blank must be returned to the Assessor's Office by the first of October, 1897, or 10 per cent. will be added to the assessment.

Defendant's Exhibits No. 8.

STATE OF KENTUCKY, }
County of Fayette. }

Oath.

I do solemnly swear that the within is a true and correct list of all real and personal property owned by me or as agent, sub-
250 ject to taxation, in the City of Lexington, Ky., and is a fair cash value to the best of my knowledge and belief, so help me God.

THE SECURITY TRUST & SAFETY VAULT COMPANY OF LEXINGTON, KY.,
Trustee Clara D. Bell.

Sign this Oath.
By W. L. THRELKELD, *Sec. & Treas.*

And afterwards on the 22d day of March 1905 at a Court of appeals held at the Capitol at Frankfort the following judgment was entered:

CLARA D. BELL'S TRUSTEE, Appellant,
vs.
CITY OF LEXINGTON, Appellee.

Appeal from the Fayette Circuit Court.

The Court being sufficiently advised it seems to them there is no error in the judgment herein.

It is therefore considered that the judgment be affirmed. Which is ordered certified to said court.

It is further considered that the appellee recover of the appellant its costs herein expended.

251 And on said date the court delivered the following opinion.

Court of Appeals of Kentucky.

Mar. 22, 1905. (To be reported.)

CLARA D. BELL'S TRUSTEE, Appellant,
vs.
CITY OF LEXINGTON, &c., Appellees.

Appeal from Fayette Circuit Court. Affirmed.

Opinion of the Court, by Judge Barker.

This action was instituted in the Fayette circuit court for an injunction restraining the delinquent tax-collector of the city of Lexington from collecting tax bills in his hands, amounting in the

aggregate to thirteen thousand, nine hundred and sixty-four dollars and ninety-six cents, against the property of Clara D. Bell, held in trust by the appellant corporation. The origin of this claim is in the retrospective assessment by the City Assessor of a part of
252 the trust property for the years 1894, 1895, 1896, 1897 and 1898. For these years, the assessor retrospectively assessed the estate as omitted property for the following values: for 1894, two hundred and seventeen thousand, one hundred and sixty-two dollars; for 1895, two hundred and eleven thousand, one hundred and four dollars; for 1896, two hundred and twenty-six thousand eight hundred and thirty-four dollars; for 1897, two hundred and thirty-eight thousand, nine hundred and twenty-five dollars; and for 1898, two hundred and fourteen thousand, five hundred and eighty-two dollars. By applying the tax-rates for the given years to these various values of omitted property, the aggregate claim of the City for back taxes—thirteen thousand, nine hundred and sixty-four dollars and ninety-six cents—was reached.

Appellant substantially alleges, as grounds for equitable interference in its behalf, first, that for the years for which the officer retrospectively assessed the property in question, it had given in all of the estate of its *cestui que trust*, and the whole having been once assessed could not be re-assessed as omitted property; second, that it was not given notice of the retrospective assessment, and
253 was thereby deprived of the opportunity either to show that the property was not liable to retrospective assessment at all, or, if so, the values placed upon it by the assessor were too high; third, that by ordinance of the City of Lexington, there had been created a back-tax assessor, who superseded, in matters of retrospective assessment, the assessor, and the latter was without authority to make the assessments complained of; fourth, that under the Statute regulating the matter the delinquent tax-collector could only sell the tax-bills at public auction, but not enforce their collection by levy or distraint.

The defendants below, who are now appellees, by their answer placed in issue all of the material allegations of the petition, and then affirmatively alleged the retrospective assessments before mentioned, and the consequent claim of the city for back-taxes evidenced by the tax-bills in the hands of the officer, and prayed for the dismissal of the petition, and a judgment over for the amount of the City's claim. A reply and a rejoinder were filed, and the issues made up on the lines indicated. Upon the final hearing, the court reduced the amount of the assessments for each of the years as follows: for the year 1894 he ascertained the omitted trust
254 property assessable for taxation to be one hundred and twenty-three thousand, seven hundred and ninety-nine dollars; for the year 1895 one hundred and sixteen thousand, one hundred and seventy-six dollars; for the year 1896 one hundred and thirty-six thousand and fifty-seven dollars; for the year 1897 one hundred and thirty-four thousand, nine hundred and ninety-six dollars, and for the year 1898 one hundred and seventy-six thousand, seven hundred and sixteen dollars; at the tax rates for the respective

years, there was found to be due the city, as unpaid taxes, the sum of eight thousand, six hundred and twenty-six dollars, for which judgment was entered. This judgment appellant now seeks to reverse.

The first question with which we are confronted is, upon whom was the burden of proof in the action? Appellant urgently insists that it was incumbent upon the city to allege and prove every essential fact necessary to make out the validity of its tax-claim. This position is untenable. It is true, the presumption will be indulged as an original proposition, that the regular assessment for the years in question were valid, and that the officers making them performed their duty; but this presumption, when the officer
255 under the authority of law and his oath of office makes a retrospective assessment, will be overcome and replaced by the new presumption that, in making the retrospective assessment, he also did his duty. It was as much the duty of those having the matter in charge to make retrospective assessment of omitted property, as to make the regular assessment; and the same presumption of regularity and validity will attend the latter official acts as attended the first. The burden of proof, therefore, when one comes into equity to enjoin the collection of a tax, which has been officially ascertained to be due, is upon the plaintiff to make out his whole case, and to do this he is required to allege and prove, if controverted, every fact, whether it be negative or affirmative, necessary to show the invalidity of the tax assailed.

The very question we have here arose in Board of Councilmen of Frankfort *v.* Mason, Hoge & Co., 100 Ky., 48; upon the point in hand it was said: "It is insisted by counsel for appellee that in this proceeding to enjoin the collection of tax, the burden is on the city to show that the property on which it is sought to collect tax was omitted from the assessment.

256 "To sustain this contention cases are cited wherein proceedings had been instituted to compel the assessment of property omitted in previous assessments or when direct proceedings were instituted to enforce the collection of taxes.

"In a proceeding in the county court to have property assessed which it is claimed was omitted from previous assessments by the authorities whose duty it was to assess it, the court very properly held that in such proceeding the burden was on those complaining to show that the tax-payer owned property subject to taxation which had been omitted in assessments.

"Likewise this court has repeatedly held that, in actions to collect tax, the plaintiff must show that the law authorizing the levy and assessment has been strictly complied with.

"This is a collateral proceeding. Proper authority made the levy and assessment. That levy and assessment is assailed. The presumption should be indulged that the assessment is correct until the plaintiff shows that it was improperly made, or that it was not the owner of the property, or that, if it was, the same was not liable for the taxes in question." (See Judson on Taxation,
257 Sec. 550.)

The regular assessments for the years involved in this liti-

gation were made by the appellant giving in a lump sum as the value of the personalty subject to taxation owned by the *cestui que trust*. These returns, although upon the blanks furnished by the assessor, were not sworn to as by law required, nor were the various items which made up the sum total given. Appellant, in making these annual returns for assessment, gave in the following:

For the year 1894.

"Valuation under the Equilization Law..... ..... $294,000"

For the year 1895.

"Amount of bonds..... $300,000"
"Notes secured by mortgage..... 2,700"

For the year 1896.

"Amount of bonds, notes, mortgages or other securities... $300,000"

For the year 1897.

"Amount of bonds, notes, mortgages and other securities... $303,000"

258 For the year 1898.

"Amount of bonds, notes, mortgages and other securities ..... $280,000"

These figures were accepted by the assessor as correct. It does not appear of what items the aggregate values were composed. The assessor could not have made any valuation of them himself, and, therefore, there was no assessment of what was omitted. If appellant had submitted to the assessor the various bonds, mortgages, notes and other securities, which go to make up the aggregate values given in, and the officer, after surveying the whole, had assessed it for less than its real value, the city would have been bound by the valuation, and no re-assessment would have been permitted as omitted property. But that is not the case here. The officer simply accepted the return made by the appellant without knowing what property went into the valuation. It was incumbent upon the appellant to make a fair and full disclosure by items of all the property subject to taxation it held in trust for Clara D. Bell, and it in nowise discharged its duty to the city by imposing
259 upon the officer an aggregate valuation without the items of which it consisted, and without being sworn to as by law required. The officer, too, neglected his duty in accepting the illegal return; but his laches cannot avail the appellant.

The claim of a want of proper notice of the retrospective assessment has already been largely disposed of in what we said as to the burden of proof. It was necessary (assuming that notice was vital) for appellant to allege, and, if denied, prove, a want of notice of the retrospective assessments by the officer. While this would involve the proving a negative, which is contrary to the general rule, yet

this is necessary in cases such as this under discussion. As the law presumes that the officers having the matter in charge did their duty, if notice was necessary, it will be presumed to have been given. Greenleaf on Evidence, section 78; Brandt *v.* Hyatt, &c., 7 Bush 363; Brown *v.* Young, 2 B. Mon. 26. In the latter case, the court cited the ancient case of Monk *v.* Butler, 1 Rol. Rep. 83, and said: "That was a suit for tythes, in which the defendant pleaded the plaintiff had not read the thirty-nine articles, and it was held, both in the Spiritual Court and the Court of King's Bench, upon a
260 motion for a prohibition, that the defendant was bound to prove it, 'for the law will presume that the parson had read the articles, for otherwise he would lose his benefice; *and when the law presumes the affirmative, then the negative must be proved.*'" And also: "In the case of Williams *v.* The East End Com. the rule was applied with the effect of requiring the plaintiff to prove that the defendants *had not given notice* of the combustible nature of certain oil, &c., which they had put on board the plaintiff's ship."

While appellant in this case did not show that it had not received notice of the re-assessment we think the appellees established that it did have notice, although it was not necessary for them to have done so. This record shows that appellant relied upon the technical defense, that the regularity of the assessment made by the officer could not be inquired into, or any property of its *cestui que trust* re-assessed, and had no intention whatever of recognizing the right of the assessor to re-assess any of its property as omitted.

Assuming, for the purposes of this case, that the ordinance establishing a back-tax collector is valid, we do not think this
261 officer displaces the regular assessor, or makes it any the less the duty of the latter to retrospectively assess omitted property. Section 3197 of the Kentucky Statutes (cities of the second class) among other things provides: "Whenever the assessor ascertains that there has, in any former year or years, been any property omitted which should have been assessed, he shall assess the same against the person who should have been assessed with it, if living, if not against his representative." There is nothing in the ordinance which indicates that the back-tax collector shall be more than an additional aid in looking up and assessing omitted property, just as it is made the duty of both the sheriff and auditor's agent to look up and have assessed omitted property for State taxation.

The claim by appellant, that the city only had authority to sell the tax bills involved here, is evidently based upon a mis-reading of section 3187 of the Kentucky Statutes (charters of cities of second class), which provides that the tax bills against *real* property shall be sold at public auction, but the bills for taxes or personalty shall be collected by distraint, &c.

262 We attach no importance to the informal visit of delinquent tax collector O'Mahoney and the then county attorney Allen to the place of business of appellant, or the exhibition of the property of the trust estate made to them. Whether these officials were, or were not satisfied by the showing made, that all the property of the estate had been listed at the regular assessment, may be

set aside as immaterial; the real question is, was all of the property so listed? If not, then it should have been, and it was the duty of the assessor, when he ascertained the omission, to remedy the error by retrospective assessment.

The claim of appellant to escape a retrospective assessment of the property of its *cestui que trust* in this case is wholly technical. That it owes the tax it seeks to evade is made apparent by an examination of this record. Although it had in its hands the means of instantly and most conclusively showing either that the trust estate did not own the property with which it was assessed, or that the values were too high, it introduced no evidence whatever on this subject. While it was not incumbent upon the appellees to introduce any evidence, being authorized under the principles
263 herein enunciated to await the evidence of appellant showing the invalidity of the assessment complained of, yet they did introduce evidence which we think clearly establishes that appellant justly owes the amount of the tax which has been adjudged against the estate of its *cestui que trust*.

Equity does not favor mere technical defenses to the collection of tax claims. Taxes are the very life blood of the government; the duty of paying a ratable share of this public burden is incumbent on every property-holder. Whatever just part of this common burden is shirked by him whose duty it is to bear it, is necessarily cast as an additional burden upon other shoulders; and, therefore, while at law one may sometimes be permitted to interpose mere irregularities as a defense to the imposition of taxes, when he asks the aid of the extraordinary power of the chancellor, he should show, as a condition precedent to receiving it, that he has a meritorious defense to the tax claim he assails. The Supreme Court of Indiana, in the City of Delphi *v.* Bowen, 61 Ind., 33, thus states the rule: "A complaint to enjoin the collection of taxes must show that the assessment is illegal and void. Irregularities in the assess-
264 ment, which do not render it illegal and void, are not sufficient to maintain an injunction. When a portion of the taxes assessed is valid, and another portion void, the plaintiff must pay or tender the valid portion, before he is entitled to equitable relief. These principles may be regarded as settled." And in Jones, Auditor *v.* Benton County, 27 Ind., 511, it was said: "But when he appeals to a court of equity, and invokes its extraordinary writ of injunction, he must rely upon some substantial equity, and cannot avail himself of naked irregularities, or the neglect of mere forms, to shield himself from a liability confessed to be just. It would be difficult to imagine a case more utterly barren of equity than this, if this answer be true. He committed serious errors in his lists, which in conscience, and as a good citizen, he ought voluntarily to have corrected, but did not. They were corrected, and now he asks to be secured in an advantage as the fruit of his own blunder, merely because the correction, thought just, was directed by the wrong authority and without notice to him. The writ of injunction cannot issue for such a purpose without disregarding both principle

and authority." To the same effect is Reynolds *v.* Bowen, 36
265 N. E. 756. In the case of the City of Louisville *v.* Board of Trade, 90 Ky. 419, the court, in speaking of enjoining the collection of taxes, said: "This being so, it was the duty of the party asking relief to definitely point out the extent to which he was entitled to be relieved. If he seeks equity he must do equity. He must show his willingness to pay what he in fact owes, or at least in a case like this he must show to the court how much he in fact does not owe. He must, inasmuch as an injunction is peculiarly an equitable remedy, separate the just from the unjust portion of the claim, and ask relief only as to the latter. This the appellee has failed to do, and the judgment is reversed, with directions to dismiss the petition."

The rule then is, when one comes into equity asking for relief against taxation, it is incumbent upon him to show clearly that he has paid or is willing to pay all that he justly owes toward the public burden; he must make a full, fair and complete disclosure of the property he has subject to taxation, so that the court may judge as to whether or not he is unjustly taxed; he must come, not only with clean, but with open hands.

Upon the whole case, we are of opinion that no injustice has been done appellant, and the judgment is affirmed.

266 And afterwards on the 21st day of April 1905, at a court of appeals at Frankfort the following order was entered, towit:

"BELL'S TRUSTEE *vs.* CITY OF LEXINGTON. Fayette.

Came appellant by counsel and filed an agreement, and on motion is given 30 days extention of time to file a petition for rehearing.

(The agreement mentioned in the foregoing order is as follows:

Court of Appeals of Kentucky.

CLARA D. BELL'S TRUSTEE, Appellant,

vs.

CITY OF LEXINGTON, Appellee.

Stipulation.

Owing to the illness of that one of appellant's counsel having the matter in charge, it is hereby stipulated that the time for filing a petition for rehearing in this cause shall be extended for thirty days.

J. D. & G. R. HUNT,
BRONSTON & ALLEN,
BRECKINRIDGE & SHELBY,
Attorneys for Appellant.

267 MORTON & DARNALL,
GEO. C. WEBB,
GEO. S. SHANKLIN,
Attorneys for Appellee.

And afterwards on the 19th day of May 1905, at a court of Appeals at Frankfort the following order was entered, towit:

"BELL'S TRUSTEE *vs.* CITY OF LEXINGTON. Fayette.

Came appellant by counsel and filed a petition, and moved the court to grant a rehearing herein, which motion is submitted.

The petition for rehearing is in words and figures as follows:

Kentucky Court of Appeals.

CLARA D. BELL'S TRUSTEE, Appellant,
v.
CITY OF LEXINGTON & Others, Appellees.

Petition for Rehearing.

The appellant's counsel desire very briefly to call the
268 Court's attention to what appear to us to be manifest errors in the judgment which this Court has ordered to be affirmed; which were in effect admitted as mistakes by the appellee's counsel in their brief and oral arguments, but were regarded by them as so plain on the record that they could be corrected as clerical misprisions; and consequently could not be the subject of an appeal until the lower Court on application, should have refused to correct them.

I.

For the year 1894, the judgment holds the appellant bound for taxes on ten $1,000.00 bonds of the Louisville & Nashville Railroad Company, Greensburg Branch valued therein at $10,500.00; on two $1,000.00 bonds of the Louisville, Evansville & St. Louis Railroad Company, valued at $2060.00, and on notes valued at $4800.00. We submit this to be an error, manifest on the record to the amount of $14060.00 of assessed value amounting at the rate charged of $1.40 per hundred to $196.84 tax. Comparing this with the defendant's answer and cross petition, the Court will find that it is not even charged that the appellant had on hand the ten bonds
269 of the Louisville & Nashville Railroad Company, Greensburg Branch, nor the two bonds of the Louisville Evansville & St. Louis Railroad Company; and it appears that they are charged with having notes amounting in all to the sum of $3300.00, and no more. This comparison, we submit, shows unquestionably the errors of $10,500.00, Louisville & Nashville Railroad Co. bonds; $2060.00 Louisville Evansville, & St. Louis R. R. Co. bonds, and $1500.00 in valuation of notes, all amounting to $14,060.00. These discrepancies appear from a comparison of the judgment, record page —, and of the answer and cross-petition, page —. This error is rendered the more manifest from a succeeding part of the answer and cross petition page —, where it is alleged as to these ten Louisville & Nashville R. R. Co. bonds, Greensburg Branch, that they were purchased by the Trustee between the date of the assessment for 1894 and the date of the assessment for 1895, page —; also that the price paid for these bonds was $5522.50, instead of the valuation of $10,500.00 as adjudged. So it appears as we sub-

mit, that to the extent of $14,060.00, judgment is rendered without allegation as well as without proof; and that $10,500.00 of the assessment is for property which defendant itself alleges was bought after the assessment day for 1894, and though found by the
270 Court, without proof to be worth $10,500.00 was bought at the price of $5522.50.

Again take the year 1898, the appellees in their answer and cross petition allege the total value of the assessable personal property belonging to the trust estate, after deducting the original assessment, to be $214,582.00, and refer to Exhibit 3, page — as containing a statement of the items. These items as contained in the Exhibit are as follows:

Diamonds	$1100.00
Amount of cash on deposit	11028.00
Amount of bonds, notes, mortgages & other securities	120400.00
Amount of stock in Ky. corporations	1500.00
Amount of stock in foreign corporations	80554.00
Aggregating as stated	$214582.00

Now it is clear from the record that the Trustee had no diamonds, and we submit it is equally plain and was admitted by the counsel for the appellee in their briefs and oral arguments and throughout the case, and adjudged by the lower court without cross appeal taken, that the stock in Kentucky corporations and the stock in foreign corporations (the latter being the stock of the Western Union Telegraph Company) were exempt from taxation in the hands of the stockholders, under Section 4088 of the Kentucky Statutes;
271 therefore from the value of omitted property as charged in the answer and cross petition..... $214582.00

Must be deducted as not subject to taxation the following items:

Diamonds	$1100.00	
Stock in Ky. Corporations	1500.00	
Stock in foreign Corporations	80554.00	
Amount		83154.00
Balance		$131428.00

Thus it appears that taking the amount for assessment as claimed by appellees and deducting plain errors, there remains a balance of property for assessment for the year 1898 of only $131,428.00, instead of the amount of $176,716.00 as found by the Court in its judgment; an error as to the amount of the assessment of $45,288.00 in excess of the amount claimed, involving a mistake in the judgment against the appellant of $543.45. It seems to the counsel for the appellant that these are plain mistakes in the judgment which are not covered by the broad principles announced in the Court's opinion, imposing

the burden of proof on the appellant; for here is a case, in the first instance, where the Court has rendered judgment not only in the absence of proof but in the face of appellee's own allegations;
272 and in the other case an inadvertence in including in the Court's judgment, items admitted and adjudged to be not subject to the tax. We are confirmed in this view by the appellee's treatment of these matters in their brief and oral arguments. The errors suggested were deemed by them to be so plain a departure from the record that they could be corrected by the lower Court after term as clerical misprisions, and consequently could not be made the subject of an appeal until motion had been made for their correction in the lower court and relief refused. We shall not enter into the question as to whether these errors are so correctible as clerical misprisions. We only remark that the allowance of the contention of appellee's counsel in this regard would give a wider scope to that form of mistake designated in the Civil Code as clerical misprisions, than we had ever supposed it allowable to do; but we respectfully submit that whatever this Court's conclusion may be on the case as a whole, these mistakes ought to be corrected as may be easily done by reversal and proper mandate. We cannot but think there are other errors in the judgment ordered affirmed which can not be accounted for on the sweeping principle which the Court announces that the burden of proof is on the appellant and
273 all presumptions in favor of the assessments; but we have selected the above as the plainest errors and desiring to be brief, we will not any further pursue the argument on this line. As to these items there is no room, we submit, for the contention that the defense is without merit, and purely technical.

II.

We ask the Court's further indulgence for a brief restatement of our contention on the main point in this case,—the validity for the assessment itself. Our contention is that the so-called assessment relied on as such in this case, is void and of no effect whatever, because to give it effect as an assessment would contravene that provision of the Constitution of the United States which forbids that a State shall deprive any person of property without due process of law. We have already argued this point at length in our briefs and oral arguments and have cited many opinions of the Supreme Court of the United States, besides many other authorities, and do not now intend to enlarge on that subject or to cite additional authorities; all that we propose in this petition is to briefly re-state the facts of this case as they seem to us to bear on the constitutional principle which we invoke.

The assessment is the first step and the very foundation
274 of all proceedings to collect an ad valorem tax. What is the portion of the tax to be paid by any tax payer, can not in the nature of the case be known either to himself or the State until an assessment is made, ascertaining his property and the valuation put upon it. This is the very foundation of all proceedings to collect the tax; and just as no tax can be enforced where there is no assess-

ment at all, so no tax can be legally enforced where the assessment is void. We are therefore, we think, justified in saying that if our contention be true that the so-called assessment in this case was void, then all subsequent proceedings for the collection of the tax based on it, were unauthorized and wrongful; and that being true the appellant could not be legally called on to, defend further against them whether he had or had not property which by proper proceedings might be subject to the tax claim. It might be otherwise in the case of an assessment merely irregular, but a void assessment must be held naught for all purposes. The question therefore whether the assessment is valid or void, lies at the very foundation of this case; and if held to be void it ought to follow as a matter of course that no proceedings to collect the taxes can be lawfully maintained; and the appellees' claim as a whole and in all its
275 parts is fundamentally vicious. It is clear under our system that if the assessment be valid for any purpose, it is to a certain extent final and conclusive of the rights of the State and of the tax payer. The acts of the assessing authorities in ascertaining the value of the assessed property, where a legal assessment is consummated, is conclusive on the State and the tax payer; and under ordinary circumstances can not be reviewed on the question of value by any court or tribunal. This court has often declared this principle and we cited many cases in support of it in our briefs, and do not now stop to repeat them.

If the so-called assessment had no other force than is assigned to it in the Court's opinion of transferring the burden of proof and imposing it on the tax payer, we submit that to give even that effect to a void assessment is in contravention of the constitutional principle we invoke. So that as we contend, if it be held the assessment in this case be lacking in the qualities to make it a legal assessment, the appellees' entire claim is without any foundation whatever, and any attempt to enforce it is illegal and wrongful.

What are the facts upon which this fundamental question
276 must be determined? We are at a loss to know what is the meaning of the opinion in the words, "*We think that the appellee established that appellant did have notice.*" There is not in this record, so far as we can recall, a word of proof bearing on the question of how this assessment was made. The facts on that subject must be gathered from the pleadings alone; and we submit that the pleadings can not be construed as establishing that fact.

The petition and amended petition set forth in distinct terms that M. C. Foushee, the City Assessor, on the afternoon of December 31st, 1898, without any notice to or knowledge of the appellant, and without any previous conference with the appellant, made the entries which are claimed to be the assessments in this case; and on the same afternoon they were turned over to the Delinquent Tax Collector who demanded payment of the tax of appellant's President, and on his refusal levied on appellant's property; all done on the afternoon of the same day; that the appellant had no notice or knowledge of said assessment, did not know that the Assessor intended to make that or any assessment, and had never had any conference with him

about it. No denial is made of any of these statements; but the appellees attempt to put a different color on the transaction by alleging in their answer and cross petition that for more than thirty days before the assessment, certain "authorized officers and
277 agents of the City" had been claiming of appellant the listing of certain personal property, alleged to be omitted, and the payment of the tax thereon, and had given a list of the alleged omitted property to the appellant and had threatened that it would be assessed by the City Assessor if said property was not listed and the tax paid by appellant. It is nowhere alleged what officers or agents of the City were thus speaking in behalf of the Assessor; and it is not alleged to have been the Assessor or any Deputy Assessor; nor is it anywhere alleged that the list presented of said omitted property was the same or in substance the same as the assessment made, but it is only stated that *a list* was presented of the property alleged by these officers to have been omitted. In the reply it is distinctly alleged that the list so presented was materially different from the list of property as assessed.

We think it clear from the opinion of this Court in the City of Lexington *v.* Lowry 113 Ky. 763, decided since the institution of this suit, that no other officer (there being an absence of statutory authority to that effect), could have been appointed or designated to perform the duties imposed by the charter on the City Assessor; and that no other officer or agent could have had the authority to take even an initial step before making the assessment;— a duty devolved by the charter exclusively on the Assessor, who in
278 that duty, exercises a *quasi* judicial function.

Can the state of facts above presented, which we think are accurately stated from the record, justify the contention that the appellant had such notice of the assessment made or proposed to be made against him by the City Assessor, as gave him the right and furnished him an opportunity to be heard as to its correctness? and surely nothing less than that can be held to answer the requirements of the constitution; for a notice is nothing without the right and opportunity to be heard on the assessment. Take the statements of the answer and cross petition for all it says without denial or qualification, and does it present any statement of facts which can answer these reasonable requirements? The officer or agent acting for the city, was not its assessor and had no authority to take even an initial step in the assessment of the property; nor to speak for the Assessor, who was a *quasi* judicial officer and the only person or officer qualified to make the assesment, (113 Ky. 763). Adopting the analogies of a judicial proceeding, could such demand and threats as here alleged, be held to dispense with notice and opportunity to be heard in this case any more than demand of claim and threats of suit by a party or his attorney could be held to dispense with process on suit when actually brought?

279 Stated as its best for the Appellees, can it be contended that these demands and threats gave to the appellant notice of this assessment, of the property intended to be embraced in it, of its supposed value, and did it give him the required right and oppor-

tunity to be heard as to whether the items and value were correct? With much respect we submit that there can be but one answer to this question and that answer must under the authorities be conclusive of the invalidity of this assessment. We submit that the authorities, especially the opinions of the Supreme Court of the United States, many of which were cited in our briefs, are absolutely convincing that an assessment to make it valid as such, must be made after notice to the tax payer with the right and opportunity at a prescribed time and place to be heard by the assessing officer or a board of review as to the correctness of the items and the value fixed on them; and that unless such notice and right of hearing is given at some stage of the proceeding to collect the tax before the assessment becomes conclusive upon the tax payer as to either the items or their value, the proceedings must be condemned as in contravention of the Federal constitution. In all such cases notice, including the right and opportunity to be heard are essential and the notice must be personal, stating the time and place of hearing, except in those cases where assessments are made under a statute which itself
280 gives the right to be heard and prescribes the time and place where the officer or board sit for that purpose.

Cooley on his work on Taxation, lays down the doctrine as follows: It is not customary to provide that the tax payer shall be heard before the assessment is made except when a list is called for from him, but a hearing is given afterwards either before the assessors themselves or before some Court or Board of Review, and of the meeting of the Court or Board of Review, the tax payer must in some manner be informed: either by personal notice or by some general notice which is reasonably certain to reach him, or which is covered by some general law which fixes the time and place of meeting of which he must take notice. * * * It is not enough to sustain a tax under such circumstances that the officer has acted with just intent or even that the assessment is relatively fair; the conclusive answer to any suggestion of the kind is that the party has been denied his right to meet such claim at the proper time." (1 Cooley, Taxation 3rd. Ed. pages 629 to 632).

These principles are sustained by numerous authorities cited by the author, many of which we referred to in our brief and we will not here repeat the citations.

As above stated, and we think made clear in our original briefs, under our system, the assessment when consummated becomes conclusive on the tax payer at least as to the value of the listed property, which subject is not open to further inquiry in any stage of the proceedings for enforcing the tax, and under the Court's opinion
281 in this *prima facie* proof for all purpose-.

With the utmost respect for the Court's opinion we are constrained to submit that this case falls far short of the requirements of the law as they have been laid down by the Supreme Court of the United States and other authorities, including the opinions of this Court.

We beg to call the Court's attention to Sec-. 3179 to 3182 of the Ky. Statutes, prescribing the proceedings for the original assessment

in cities of the second class. Mark the contrast between the summary proceedings used in the case at bar and the careful provision of the statute provided for the original assessment. The statute gives large powers to the Assessor to ascertain the facts on which its assessment is to be made. It provides the fullest notice and right and opportunity to the tax payer to be heard at all proper stages of the proceedings, extending through a period of several months. Is it not anomalous that a result reached with so much care and attention in the original assessment, can be reversed by the action of a single officer in the seclusion of his own office and without notice of any kind to the person affected by the proceedings?

We submit it to be in the last degree illogical to give to this summary proceeding the effect assigned to it by the Court in the opinion, to be a *prima facie* proof first of its own sufficiency, and then of every other material fact in the case. In our briefs and oral
282 arguments we cite very numerous authorities on the points relied on in this petition and do not deem it necessary to cite them here, and will do no more than to refer the Court, if it desires to review them, to our brief and supplemental brief.

The petition is presented by appellants' counsel in the firm belief that the errors in the judgment appealed from as to the taxes for the year- 1894 and 1898 are manifest on the record and ought to be corrected by the mandate of this Court. In the points referred to, the mistakes in the judgment seem to us so plain as not to admit of argument or denial, and were in fact admitted as mistakes in the briefs and arguments of appellees' counsel on the hearing in this Court.

It has been our further effort to briefly re-state the facts of this record bearing on the matter of the alleged notice, which as appellees' counsel contend, save the assessment in question from the constitutional objection made against it; and without repeating the citations made in our briefs and arguments to insist that allowing to the appellees' allegations on that subject their utmost effect, appellees' case as presented, falls far short of exhibiting any right and opportunity for a hearing at a time and place fixed either
283 by the statute itself or by personal citation, (which we submit to be essential to a valid assessment,) and without which right and opportunity, a notice could be nothing.

We beg to say to the Court that this petition is not presented merely because the law and rules of this Court allow it; but speaking with the utmost respect, because of an earnest conviction on the part of counsel that the opinion delivered on the very important question under review, ought to be re-considered, and as far as it applies to the facts in this case, should not be permitted to stand.

Entertaining the views we do, we can not in justice to our clients do less than offer this our petition for a re-hearing, which is respectfully submitted.

J. D. & G. R. HUNT,
JOHN T. SHELBY,
BRONSTON & ALLEN,
Attorneys.

And afterwards on the 31st day of May, 1905 at a court of Appeals held at Frankfort the following order was entered towit:

"BELL'S TRUSTEE *vs.* CITY OF LEXINGTON. Fayette.

The court being sufficiently advised it is considered that
284 appellants' petition and motion for rehearing be and the same is hereby overruled.

Be it remembered, that afterwards on the 9th day of June 1905 there was filed in the office of the Clerk of the Court of Appeals a Petition for Writ of Error, which is hereto attached and is as follows:

285 Court of Appeals of Kentucky.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, as Trustee of Clara D. Bell, Appellant,

vs.

THE CITY OF LEXINGTON, KENTUCKY, and E. T. GROSS, Delinquent Tax Collector of Said City, Appellees.

Petition for Writ of Error.

The petitioner, The Security Trust and Safety Vault Company of Lexington, Kentucky, as Trustee of Clara D. Bell, appellant herein, hereby sets forth that on or about the 22nd day of March, 1905, the Court of Appeals of the State of Kentucky made and entered an order and judgment herein in favor of the appellees, The City of Lexington, Kentucky, and E. T. Gross, Delinquent Tax Collector of said City, and against said petitioner, the appellant; that afterwards by order of said Court of Appeals duly made appellant was allowed to file a petition for a rehearing of this cause, which petition for a rehearing was duly filed, and thereby, under the laws of the State of Kentucky and the rules of said Court, the said order and judgment was suspended and did not become final until the said Court of Appeals acted upon said petition for a rehearing; that afterwards on the 30th day of May, 1905, the said petition for a rehearing was overruled by said Court of Appeals and its said judgment and order, made, as aforesaid, on or about the 22nd day of March, 1905, became final, and the mandate of said Court of Appeals was upon said day duly issued thereon; that in said order and judgment and the proceedings had prior thereunto in this cause certain
286 errors were committed to the prejudice of said petitioner, all of which will more in detail appear from the assignment of errors which is filed with this petition:

That the said Court of Appeals of the State of Kentucky is the highest court of the said State of Kentucky in which a decision in this suit and this matter could be had.

Wherefore, said petitioner prays that a writ of error from the Supreme Court of the United States may issue in this behalf to the

Court of Appeals of the State of Kentucky for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 9th day of June, A. D. 1905.

JNO. R. ALLEN,
J. D. & G. R. HUNT,
JNO. T. SHELBY,
Attorneys for said Petitioner.

The writ of error as prayed for in the foregoing petition is hereby allowed this 9th day of June, A. D. 1905; the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of Fifteen Thousand Dollars ($15,000.00).

Dated at Frankfort, Kentucky, this 9th day of June, A. D. 1905.

J. P. HOBSON,
Chief Justice of the Court of Appeals of Kentucky.

Filed in my office this 9 day of June, A. D. 1905.

J. MORGAN CHINN,
Clerk of the Court of Appeals of Kentucky.

286½ [Endorsed:] Filed Jun 9 1905 J Morgan Chinn C Ct.

287 And afterwards there was filed in the office of the Clerk of the Court of Appeals an Assignment of Errors, and which is hereto attached and is as follows:

288 Court of Appeals of Kentucky.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, as Trustee of Clara D. Bell, Appellant,

vs.

THE CITY OF LEXINGTON, KENTUCKY, and E. T. GROSS, Delinquent Tax Collector of Said City, Appellees.

Assignment of Errors.

Now comes the said appellant, the plaintiff in error, and respectfully submits that in the record, proceedings, decision and final judgment of the Court of Appeals of the State of Kentucky in the above entitled cause there is manifest error in this, to-wit:—

1. The said Court erred in holding and deciding that the Fayette Circuit Court, from whose judgment this appeal was prosecuted to said Court of Appeals, had committed no error in overruling the demurrer of said plaintiff in error, who was plaintiff in said Fayette Circuit Court, to the several paragraphs of the answer, set-off and counter-claim of the City of Lexington, Kentucky and E. T. Gross, Delinquent Tax Collector of said City, who were defendants in said Fayette Circuit Court; and erred in refusing to reverse the judgment

of the Fayette Circuit Court on account of its said ruling upon said demurrer.

2. The said Court of Appeals erred in holding and deciding that the burden of proof was upon the said The Security Trust and Safety Vault Company of Lexington, Kentucky, Trustee, as aforesaid, to establish that it did not have notice of the retrospective assessment complained of in this cause and was thereby de-
289 prived of an opportunity to show that the property embraced in said retrospective assessment was not liable to be assessed and of the opportunity to show that the values placed upon it in said assessment were too high.

3. The said Court of Appeals erred in holding and deciding that the said Security Trust and Safety Vault Company of Lexington, Kentucky, Trustee, as aforesaid, did have such notice of said retrospective assessment and such opportunity to be heard upon the question as to what property, if any, should be included in said assessment and to the values of such property as was included in it as it, the said The Security Trust and Safety Vault Company of Lexington, Kentucky, Trustee, as aforsaid, was entitled to have under and by virtue of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

4. The said Court of Appeals erred in holding and deciding that said retrospective assessment did not contravene the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and that said assessment was not void by reason of such contravention.

5. The said Court erred in refusing to hold and adjudge that the said retrospective assessment was, by virtue of the provisions of section 1 of the Fourteenth Amendment to the Constitution of the United States, absolutely void by reason of the fact that no notice thereof was given to the plaintiff in error, and the plaintiff in error had no opportunity before the same became final to be heard, either by the Assessor or any other assessing tribunal, upon the question either as to whether such retrospective assessment should be made at all or what property should be included therein or as to the
290 values of such property as might be included therein; and in refusing to reverse the judgment of the Fayette Circuit Court and remand said cause to said Court with directions to grant to the plaintiff in error, who was plaintiff in said Fayette Circuit Court, the relief prayed for by it; whereby the plaintiff in error and its said *cestui que trust* have been deprived of the rights and privileges secured to them by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, the said apellant, plaintiff in error, prays that a writ of error from the Supreme Court of the United States may issue to the Court of Appeals of the State of Kentucky, and further prays that the Supreme Court of the United States will reverse the said final order and judgment of the Court of Appeals of the State of Kentucky, and order and direct that the said cause be remanded to the Fayette Circuit Court of said State of Kentucky, with directions

to grant to the plaintiff in error the relief demanded by it in said cause, and all such other relief as may be proper.

Dated this 9th day of June, A. D., 1905.

JNO. R. ALLEN,
J. D. & G. R. HUNT,
JNO. T. SHELBY,
Attorneys for said Plaintiff in Error.

290½ [Endorsed:] Filed Jun 9 1905 J Morgan Shinn C Ct.

291 And afterwards there was filed in the office of the Clerk of the Court of Appeals, a Writ of Error from the United States Supreme Court to the Court of Appeals of Kentucky, on which is endorsed thereon, the allowance of same by the Chief Justice of the Kentucky Court of Appeals and which is hereto attached and is as follows; (Two copies of which Writ of Error, with endorsement are on file in said Clerk's office, one for each of said defendants in error).

292 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Court of Appeals of the State of Kentucky, Greeting:—

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Court of Appeals of the State of Kentucky, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between The Security Trust and Safety Vault Company of Lexington, Kentucky, as Trustee of Clara D. Bell, Appellant, and The City of Lexington, Kentucky, and E. T. Gross, Delinquent Tax Collector of said City, Appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of The Security Trust and Safety Vault Company of Lexington, Kentucky, as Trustee of Clara D. Bell, as by *his* complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy

293 justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the

same at Washington on the 8th day of July, 1905, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of the Circuit Court of the United States, for the Eastern District of Kentucky, at Frankfort, this the 9th day of June, A. D., 1905.

[Seal 6th Circuit Court Eastern Ky. Dis., U. S. of America.]

WALTER G. CHAPMAN,
Clerk of the said Circuit Court.

Allowed by
J. P. HOBSON,
Chief Justice of the Court of Appeals of Kentucky.

294 And afterward there was filed in the Office of the Clerk of the Court of Appeals a Writ of Error Bond, which is in words and figures towit:

Court of Appeals of Kentucky.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, as Trustee of Clara D. Bell, Appellant,
vs.
THE CITY OF LEXINGTON, KENTUCKY, and E. T. GROSS, Delinquent Tax Collector of said City, Appellees.

Bond.

Know all men by these presents:—That we, The Security Trust and Safety Vault Company of Lexington, Kentucky, as Trustee of Clara D. Bell, as principal, and James A. Headley, as surety, are held and firmly bound unto The City of Lexington, and E. T. Gross, as Delinquent Tax Collector of said City, in the sum of Fifteen Thousand Dollars ($15,000.00) to be paid to the said obli-
295 gees, their successors, representatives and assigns, to the payment of which well and truly to be made we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, by these presents.

In testimony whereof We have hereunto subscribed our names and affixed our seals this 8th day of June, A. D. 1905.

Whereas the above named, The Security Trust and Safety Vault Company of Lexington, Kentucky, as Trustee of Clara D. Bell, hath prosecuted, as plaintiff in error, a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Court of Appeals of the State of Kentucky:

Now, therefore, the condition of this obligation is such that if — above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages, if it shall fail to make good

its plea, then this obligation shall be void; but otherwise to remain in full force and effect.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY,
As Trustee of Clara D. Bell,
By JAMES A. HEADLEY, *Vice-President and*
C. N. MANNING, *Secretary.*
JAMES A. HEADLEY. [SEAL.]

296 STATE OF KENTUCKY, *County of Fayette, sct:*

I, D. G. Falconer, a Notary Public within and for Fayette County, State of Kentucky, hereby certify that on this, 8 day of June, A. D. 1905, before me personally appeared the above named James A. Headey and C. N. Manning, known to me to be the persons whose names are above subscribed as Vice President and Secretary, respectively, of the Security Trust and Safety Vault Company of Lexington, Kentucky, and who executed in its name the foregoing bond, and acknowledged that they had executed said bond as the free act and deed of the said The Security Trust and Safety Vault Company of Lexington, Kentucky, and declared that the seal affixed to said bond as the seal of said corporation is the true and corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors: And I further certify that on the same day and in said County and State the above named James A. Headley, known to me to be the person described in and who executed said bond as surety, also personally appeared before me, and acknowledged that he executed said bond as his free act and deed.

My commission expires January 15, 1906.

297 Given under my hand and official seal this 8 day of June, A. D. 1905.

D. G. FALCONER.
Notary Public in and for Fayette County, State of Kentucky.

I hereby approve the foregoing bond and surety this 9th day of June A. D. 1905.

J. P. HOBSON,
Chief Justice of the Court of Appeals of Kentucky.

And afterwards on the 13th day of June 1905 there was filed in the office of the Clerk of the Court of Appeals of Kentucky, the original Citation, with proof of service endorsed thereon, and which is hereto attached and is as follows:

298 UNITED STATES OF AMERICA, *ss:*

To the City of Lexington, Kentucky, and E. T. Gross, Delinquent Tax Collector of said City, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the

Clerk's Office of the Court of Appeals of the State of Kentucky, wherein The Security Trust and Safety Vault Company of Lexington, Kentucky, as Trustee of Clara D. Bell, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. P. Hobson, Chief Justice of the Court of Appeals of Kentucky, this 9th day of June, in the year of our Lord one thousand nine hundred and five.

J. P. HOBSON,
Chief Justice of the Court of Appeals of Kentucky.

Attest:
J. MORGAN CHINN,
Cl'k Court of Appeals.

Copy of the within citation received, and service of said citation hereby acknowledged this 12th day of June, A. D. 1905.

MORTON, WEBB & WILSON,
GEORGE S. SHENCKLEN,
MORTON & DARNALL,
Attorneys for Defendants in Error.

298½ [Endorsed:] Citation. Filed Jun 13 1905 J. Morgan Chinn, C. Ct.

299 *Return to Writ of Error.*

In obedience to the command of the within writ, I, J. Morgan Chinn Clerk of the Court of Appeals of the Commonwealth of Kentucky herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record, of the within entitled cause, with all things concerning the same.

In testimony whereof, I have hereunto set my hand and caused my official seal to be hereunto affixed. Done at the Capitol at Frankfort this the 19th day of June 1905.

[Seal Kentucky Court of Appeals.]

J. MORGAN CHINN,
Clerk Court of Appeals of Kentucky.

Endorsed on Cover: File No. 19,812. Kentucky Court of Appeals. Term No. 310. The Security Trust and Safety Vault Company of Lexington, Kentucky, Trustee of Clara D. Bell, plaintiff in error, *vs.* The City of Lexington, Kentucky, and E. T. Gross, Delinquent Tax Collector of said City. Filed June 23d, 1905. File No. 19,812.

ILE COPY. No. 55.

19,812.

Supreme Court of the United States.

OCTOBER TERM, 1905.

Office Supreme Court, U.
FILED.
OCT 23 1906
JAMES H. McKENNEY,
CLE

THE SECURITY TRUST & SAFETY VAULT COMPANY, OF LEXINGTON, KENTUCKY, TRUSTEE OF CLARA D. BELL,
Plaintiff in Error.

vs.

THE CITY OF LEXINGTON, KENTUCKY, AND E. T. GROSS, DELINQUENT TAX COLLECTOR FOR SAID CITY,
Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR.

JOSEPH D. HUNT,
GEORGE R. HUNT,
JOHN T. SHELBY,
JOHN R. ALLEN,
Counsel for Plaintiff in Error.

RICHARDSON, PRINTER, LEXINGTON, KY.

Supreme Court of the United States.

THE SECURITY TRUST & SAFETY VAULT COMPANY, OF LEXINGTON, KENTUCKY, TRUSTEE OF CLARA D. BELL,
Plaintiff in Error.

vs.

THE CITY OF LEXINGTON, KENTUCKY, AND E. T. GROSS, DELINQUENT TAX COLLECTOR FOR SAID CITY,
Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This case comes to this Court on a writ of error to the Court of Appeals of Kentucky, based on the contention of the plaintiff in error, The Security Trust and Safety Vault Company, of Lexington, Kentucky, Trustee for Clara D. Bell, that the judgment of that Court denies to the plaintiff a right, claimed under section 1 of the 14th amendment to the Constitution of the United States, in that the judgment of the State Court deprives the plaintiff of its property without due process of law. This suit was instituted by the plaintiff in error on February 3rd. 1899, in the Circuit Court for Fayette County, Kentucky, against the City of Lexington, Kentucky, and E. T. Gross, its delinquent tax collector, to restrain and enjoin the defendants from collecting a claim for $13,694.96, asserted against it, which was

based upon an alleged assessment for back taxes for a period of five years, 1894, 1895, 1896, 1897, and 1898, and which the defendants were proceeding to enforce by a levy upon and a sale of the plaintiff's real property. Several grounds were urged by the plaintiff in the petition, and throughout the proceedings in the State Courts, upon which the plaintiff contended that the tax and its assessment were illegal; but we assume that none of them is important on this writ of error, except only the one indicated, that the judgment giving effect to the assessment, deprives the plaintiff in error of its property without the due process of law, guaranteed to it by the Constitution of the United States; and we shall attempt to confine our discussion to that single issue.

The contention of the plaintiff, that the assessment, on which the City of Lexington based its proceedings to collect the taxes, was void under the Consitution of the United States, was presented in paragraph 2 of the petition. (Printed record page 3). To this paragraph a demurrer was sustained, and we think this was clearly an error. (Record, page 15). The same point was again more fully presented in the 4th paragraph of the plaintiff's amended petition. (Pages 17, 18, and 19.) The defendants filed their answer, making it a set-off and counterclaim against the plaintiff, setting forth the claim of the City in detail, and praying that it be adjudged by the Court, that it had a first lien upon the real estate of the plaintiff, levied on and described in the answer, to secure its claim of $13694.96, with interest from December 31st, 1898. The litigation was concluded in the Circuit Court by a judgment for the City of Lexington for the sum of $8626.63, with interest from December 31st, 1898, which judgment gave to the defendant a lien on the plaintiff's property, levied on under the tax bills, issued on said assessment, and ordered that the property of the plaintiff be sold for the purpose of satisfying said amount. (Printed Transcript p. 110.) On appeal this judgment was affirmed by the Kentucky Court of Appeals, the highest appellate court of the State, and this writ of error is prosecuted to reverse that decision.

The facts of this case are to be gathered wholly from the pleadings of the parties, there being, as we believe, not a word of proof in the entire record, bearing on the issue, which is to be determined by this Court. We state the facts as follows:

The second paragraph of the petition, (Record, page 3) and the fourth paragraph of the amended petition (pages 17, 18 and 19) set

forth in distinct terms that M. C. Foushee, the City Assessor, on the 31st of December, 1898, without any previous notice to or knowledge of the plaintiff, and without conference with the plaintiff, made the entries, which are claimed to be the assessment in this case; and that on the same afternoon they were turned over to the delinquent tax collector, who on the same afternoon demanded of the plaintiff's president payment of the tax; and on his refusal to comply with the demand, the delinquent tax collector on the same afternoon levied on the plaintiff's property; that the plaintiff had no notice or knowledge of the assessment, did not know that the assessor intended to make that or any other assessment, and had never had any conference with him in regard to it; and had at no time before or after the pretended assessment been given or allowed any privilege or opportunity to make complaint or to show cause against said assessment before the assessor or before any board or officer whatever.

It also appears by admission of the plaintiff in its petition that for the tax year 1897, certain tangible property had by inadvertence been omitted from the assessment for that year, which upon a proper valuation would have yielded on the tax rate for that year a tax amounting to $58.20. While the property had never been assessed, and the tax was not therefore presently demandable by the city authorities, and in fact no officer of the city was authorized toaccept it until assessed, the plaintiff, wishing to do equity in its broadest sense, offered to pay and did pay that sum into Court for the benefit of the City, (See Petition page 6, Order page 13) which is by the Court's direction held subject to its further order.

It was also alleged, that if the plaintiff had been given an opportunity to be heard on this matter, it could have established, that none of the property, attempted to be assessed as omitted property, nor any property with the exception just named, had in fact been omitted from the former assessments; and that none of the said property was in fact subject to assessment.

No denial is made by the defendants of any of these statements, except only the allegation, that the property was properly subject to the assessment; but as to want of notice, opportunity for hearing, and the circumstances of the assessment, as set forth in the petition and amended petition, the allegations are not pretended to be traversed. (R. p. 27 etc.) The defendants, however, attempt to put a different color on the transaction by alleging that for more than thirty days before the assessment, certain "authorized officers and agents" of the

City had been claiming of plaintiff the listing of certain personal property alleged to have been omitted, and the payment of the tax thereon, and had given to plaintiff an itemized statement of the securities and personal property held by it on the said assessment days, and had notified plaintiff that it would be assessed by the said Assessor, if the said taxes were not paid or said property was not listed. No allegation is made, showing what officers or agents of th e City were thus speaking on behalf of the assessor, nor is it anywhere charged that the list of property and values, thus charged to have been presented, was the same in substance as the assessment made, but it is merely stated that an itemized statement was presented of the property, claimed by these officers and agents to have been omitted. (R. pages 27 and 28.) In the reply, (R. pages 39 to 41) it is denied that the Assessor or any of his deputies (the only authorized officer, who could, and the officer, who actually made the alleged assessment) ever made any such demands, or threats as are stated, and it is further charged that the list and values, as claimed by these unknown officers and agents, was not the same, but materially different from the list and values of property as assessed. We refer to the petition, paragraph two (R. p. 3) and amended petition, paragraph four (R. p. 17 etc.,) the answer, set-off and counterclaim, paragraph five (R. pp. 27 and 28,) and to the reply (R. pages 39 and 40,) as showing the accuracy of this statement of facts. We again repeat, that there is no evidence or other part of the record bearing on the facts, material to this hearing. The legal effect of the pleadings is determined by the well known provisions of the Kentucky Code of Practice, which require that the parties shall plead to an issue on every material point, (Section 114,) and which further provide in Section 126 as follows:

> "Every material allegation of a pleading must, for the purposes of the action, be taken as true, unless specifically traversed." * * *

Not only did the plaintiff not have any actual notice of either the time or place, at which the assessment would be made, or that any assessment would be made, but it did not have any statutory notice. The City of Lexington is what is known in the classification of cities by the General Assembly of Kentucky as a city of the second class. The charter of cities of the second class may be found in Sections 3038 to 3225 inclusive of the Kentucky statutes. So much of

the charter as relates to revenue and taxation may be found in Sections 3174 to 3189 inclusive.

We herewith copy in full Sections 3179, 3180, 3181, and 3182, which are the only sections, which in our judgment are material in this case.

Section 3179:—"ASSESSOR TO GIVE NOTICE—OATH—OFFICE HOURS—BLANKS—FAILURE TO GIVE LIST—PENALTY—OTHER DUTIES. On or before the first day of September in each year the assessor shall give public notice, by advertisement in the official newspaper of the city and by handbills posted through the city, that all persons owning or having in their possession or under their control as agent, guardian, committee, executor, administrator, curator, trustee, receiver, commissioner or otherwise, tangible or intangible personal property on the fifteenth day of September following, are required, on or before the first day of October, to give him a true and complete list of the same, with true cash value thereof, as of the fifteenth day of September, under oath, upon forms to be furnished on application by said assessor at his office, and that all merchants in the city, doing business for themselves or others, shall, in like manner, in addition thereto, state the highest amount in value of all goods, wares, merchandise owned or kept on hand for sale by said merchants during the three months next preceding such fifteenth day of September. The assessor and his deputies shall be authorized to administer oaths and affirmations, and may examine, on oath any person touching his personal property, and the value thereof, and may examine merchants on oath as to the statements they are required to make. The assessor shall keep his office open, and be himself or have a deputy in attendance during the hours from eight A. M. to six P. M., or such other or additional hours as may by ordinance be fixed, from the fifteenth day of September to and including the first day of October, excepting Sundays and legal holidays. The assessor shall constantly keep on hand, and furnish to persons lawfully requiring the same, all necessary blanks and forms for the lists and statements required by this act. Nothing herein shall, however, prevent the assessor from assessing from the best information he can gather; and where an assessment has been made against a person who has had actual notice to appear and list his property or make statements thereof and fails to do so, the same shall not be decreased, but may be increased by the board of equalization. If any person refuse to attend when summoned, or to be sworn to answer, or to answer any questio

propounded to him by the assessor or his deputy, the assessor or deputy may, in writing, under oath, state the question, the refusal to answer it, and ask the police judge to issue a warrant against such person; and if the question appear to be a proper one, the said judge shall issue a warrant, and the said person shall, on conviction of having refused to answer the question, it being found by the court to be a proper one, be fined ten dollars, and there compelled by process of contempt to answer the question and such proper questions as the assessor may propound to him. The assessor shall assess personal property in a separate book, in which he shall separate tangible from intangible property. The word person as used herein shall mean natural and artificial persons, and the duties enjoined on them shall in the case of artificial persons, be performed by the chief officer or agent in the city at the time. Whenever the assessor shall ascertain that there has, in any former year or years been any property omitted which should have been taxed, he shall assess the same against the person who should have been assessed with it, if living, if not, against his representative."

Section 3180.—"Assessment Books to be Returned to Auditor. On or before the first of December in each year the assessor shall return to the auditor his assessment books, certified by him to be a full, careful and honest assessment of all property within the corporate limits of the city subject to assessment; and he shall take the auditor's receipt therefor in duplicate, one of which he shall transmit to each board of the general council at its first regular meeting in December. All said books and said reports shall remain in the auditor's office, subject to the inspection of the public, until they shall be transmitted to the board of equalization as hereinafter provided."

Section 3181.—Board of Equalization—qualifications—Compensation—Chairman and Clerk—General Powers and Duties. There shall be a board of equalization, to consist of three citizens, who shall be selected by the mayor with the consent of the general council. No person shall be selected as a member of said board who shall not at the time be a housekeeper and owner of real estate of the city, and shall not have been a resident thereof for five years next preceding his election. Said board shall be paid such compensation as may, by ordinance, be fixed, and shall meet at a suitable place to be provided by the city, on the first Monday in January of each year. They shall first be duly sworn to faithfully dis-

charge their duties, shall elect from among themselves a chairman and a clerk, and shall then notify the auditor that they are ready to receive the assessment books, etc., which the auditor shall deliver to them, taking his receipt therefor. The assessor shall be in constant attendance on said board, and shall furnish them all information he can. They shall have power to cause all city records to be brought to them for their inspection by the custodian thereof, and if it be necessary to retain them for defense, may do so by receipting therefor to the custodian thereof. They may also interrogate any city official, who shall at their request attend them and respond to all questions. They shall have power to administer oaths, and they shall have power to compel the attendance of witnesses; and all persons who shall refuse to attend them or to be sworn by them, or refuse to answer any question, shall be subject to the same penalties as provided for like refusal to the assessor. They shall first compare his real estate book with the plat books in the auditor's office, and see that every parcel of real estate in the city has been assessed, and if they find that any has been omitted, shall certify the same, giving the number of parcels omitted to the city solicitor, who shall enforce the penalty provided in section three thousand one hundred and seventy-seven against the assessor for so doing, and they shall assess the parcels omitted. They shall hear all complaints against the assessment made by the assessor, and shall determine the same. They shall increase or decrease assessments on like property, to make all assessments as uniform as may be, or to place a true value on the property assessed; but no increase shall be made without notice to the person whose property is to be increased, and they may, in the assessment of real estate, increase or decrease all assessments uniformly by adding or subtracting a percentage of the assessments, and a notice of such increase need not be given except by publication in the official paper of the city. Said board shall remain in session as long as the business may require, but not to exceed four weeks. Three members shall constitute a quorum, and a majority of a quorum may determine any question before it. No change in any assessment shall be made by erasure, but there shall be appropriate columns for all changes and additions, and same shall be made in a different colored ink to that which the assessor has used. When said board shall have completed its labors, it shall prepare a statement of the gross assessment of real property and the gross assessment of personal property, and the sum thereof, and also showing the increase or

decrease, if any, in the total assessment made by them, under their signatures, which they shall return to the auditor with all the assessment books, plats and papers received from him, taking his receipt for the same, which they shall transmit to the board of councilmen."

Section 3182.—"AUDITOR TO VERIFY ASSESSMENT BOOKS—PROCEEDING IF MISTAKE FOUND. The auditor shall carefully verify the statement of the board of equalization, and the assessment books returned, and if it be correct, he shall certify the same. If, however, he finds a mistake, he shall cause said equalization board to meet, and together they shall ascertain the correct amount, and the certificate of the board, indorsed by the auditor as correct, shall by him, at the first meeting in March in each year, be transmitted to the board of councilmen as a basis on which they shall predicate the annual levy ordinance."

ASSIGNMENT OF ERRORS.

The errors assigned will be found on pages 125 and 126 of the printed transcript, and, though in substance but one, are presented under five different heads, to-wit:

1. Error in overruling the plaintiff's demurrer to the answer, set-off, etc. of the defendants', especially the fifth paragraph thereof;

2. Error of the Court in imposing on plaintiff the burden of proof to show the assessment to be void and to show an absence of proper notice and opportunity for hearing: (See opinion Court of Appeals, p. 112)

3. Error in the conclusion of the Court that the plaintiff did have such notice and opportunity for hearing as to the property embraced in the assessment and the values placed on it as to constitute due process of law under the United States' Constitution;

4. Error in the Court's conclusion that the alleged assessment in manner and form as made, did not contravene the provisions of section 1 of the 14th amendment to the Constitution;

5. Error in the Court's refusal to adjudge the retrospective assessment relied on as absolutely void, because of the failure of such notice and opportunity for hearing on the property embraced and the values thereof as is required to satisfy the provisions of the Constitution, which guarantees due process of law; and in refusing to reverse the judgment of the Fayette Circuit Court because of its deprival of the plaintiff of its rights under said provisions of the Constitution.

These assigned errors, in substance one, appear through the whole case, beginning with the order of the lower Court sustaining the demurrer of the defendants to the second paragraph of the petition, consummated by the affirmance of the judgment of the Circuit Court by the Court of Appeals and ending with the order overruling the petition for rehearing.

ARGUMENT.

If we are not wholly mistaken in our construction of the facts as they relate to the question before this Court,—and we feel confident that they are accurately and fully stated above,—we submit that it is difficult to conceive of a more flagrant violation of Constitutional principles as applied to this class of cases by this court in very many opinions, on which, there is, we think, a general concurrence of all the authorities bearing on the question. Cooley, in his work on taxation, lays down the general doctrine as follows:

> "In substance the question will be, whether the right to be heard in tax cases is a constitutional right and indefeasible. Upon this subject is a general concurrence of authorities in the affirmative."
>
> "It is a fundamental rule that in judicial or quasi-judicial proceedings affecting the rights of the citizen he shall have notice and an opportunity to be heard before any judgment, decree, order or demand shall be given and established against him. Tax proceedings are not in the strict sense judicial, but they are quasi-judicial, and as they have the effect of a judgment, the reasons which require notice of judicial proceedings are always present when the conclusive steps are to

> be taken. Provision for notice is therefore part of the "due process of law" which it has been customary to provide for these summary proceedings; and it is not to be lightly assumed that constitutional provisions, carefully framed for the protection of property rights, were intended or could be construed to sanction legislation under which officers might secretly assess the citizen for any amount in their discretion, without giving him an opportunity to contest the justice of the assessment. It has often been very pointedly and emphatically declared that it is contrary to the first principles of justice that one should be condemned unheard; and it has also been justly observedof taxing officers that 'it would be a dangerous precedent to hold that any absolute power resides in them to tax as they may choose without giving any notice to the owner. It is a power liable to great abuse;' and it might safely have been added, it is a power that under such circumstances would be certain to be abused. The general principles of law applicable to such tribunals oppose the exercise of any such power. This being the case, it is not to be supposed that legislature by any ambiguous or doubtful language has undertaken to confer it. All reasonable presumption in construction should favor justice and right.'—Cooley on Taxation, 2nd Ed. pp. 362-363, 3rd Ed. pages 626–629.

This statement of the law by Judge Cooley is sustained by a citation of numerous authorities, but we need not go outside of the decisions of this Court to establish these doctrines. Among the numerous decisions of this Court, we cite the following: McMillan vs. Anderson, 95 U. S. 37; Davidson vs. New Orleans, 96 U. S. 97; Hager vs. Reclamation District, 111 U. S. 701; Spencer vs. Merchant, 125 U. S. 345; Palmer vs. McMahon, 133 U. S. 660; Lent vs. Tillson, 140 U. S. 316; Pittsburg, Cincinnati, etc. Ry. Co. vs. Backus, 154 U. S. 421; Winona & St. Peter Land Co. vs. Minnesota, 159 U. S. 537.

Indeed the authorities are so numerous in the decisions of this Court as scarcely to require special citation. In Hager vs. Reclamation District, 111 U. S. 709, the Court speaking by Mr. Justice Field says:

> "Of the different kinds of taxes, which the State may impose, there is a vast number of which, from their very nature, no notice can be given to the taxpayer, nor would notice be of any possible advantage to him; such as poll taxes, license taxes (not dependent upon the extent of the business) and generally specific taxes on persons or things or occupations. In such cases the Legislature in authorizing the tax fixes its

> amount and that is the end of matter; yet, there can be no question that the proceeding is due process, as there is no inquiry into the weight of evidence or other element of judicial nature, and nothing could be changed by hearing the tax-payer." * * * * * But when the tax is levied on the property, not specifically, but according to the value to be ascertained by assessors to be appointed for that purpose upon such evience as they may obtain, a different principle comes in. An officer in estimating the value acts judicially, and in most States provision is made for the correction of errors committed by them through Boards of Review or Equalization, sitting at designated periods provided bylaw to hear complaints respecting the justice of the assessments."
>
> 111 U. S. 709.

In Spencer vs. Merchant, 125 U. S. 355, this Court, speaking through Mr. Justice Gray, says:

> "If the legislature provides for notice to and hearing of each proprietor, at some stage of the proceedings, upon the question what proportion of the tax shall be assessed on his land, there is no taking of his property without due process of law."

Chief Justice Fuller, speaking for the Court, in Palmer vs. McMahon, 133 U. S. 669, says:

> "The power to tax belongs exclusively to the legislative hand of the government, and when the law provides for a mode of confirming or contesting the charge imposed, with such notice to the person as is appropriate to the nature of the case, the assessment cannot be said to deprive the owner of his property without due process of law. Spencer vs. Merchant, 125 U. S. 345; Walston vs. Nevin, 128 U. S. 578.
>
> "The imposition of taxes is in its nature administrative, but assessors exercise quasi-judical power in arriving at the value, and opportunity to be heard should be and is given, under all just systems of taxation according to value."

In Pittsburg Railway Co. vs. Backus, 154 U. S. 426, Mr. Justice Brewer, speaking for the Court, uses this language:

> "It is urged that the valuation as fixed was not announced, until shortly before the adjournment of the board, and that no notice was given of such valuation in time to take any steps for the correction of errors therein. If by this we are to under-

> stand counsel as claiming that there must be notice and a hearing after the determination by the assessing board as well as before, we are unable to concur with that view. A hearing before judgment, with full opportunity to present all the the evidence and argument, which the party deems important is all that can be adjudged vital. Rehearings and new trials are not essential to due process of law, either in judicial or administrative proceedings. One hearing, if ample, before judgment, satifies the demand of the Constitution in this respect."

In Winona & St. Peter Land Co. vs. Minnesota, 159 U. S. 537, the Court speaking by the same Justice, says:

> "Questions of this kind have been repeatedly before this Court, and the rule in respect thereto repeatedly declared. That rule is that a law authorizing the imposition of a tax or assessment upon property according to its value does not infringe that provision of the fourteenth amendment to the Constitution, which declares that no State shall deprive any person of property without due process of law, if the owner has an opportunity to question the validity or the amount of it either before that amount is determined or in subsequent proceedings for its collection.." The opinion cites numerous authorities.

These cases set forth in clear terms what is necessary and what is not necessary to conform a tax proceeding to that clause of the Constitution in question. Further citation or comment is deemed unnecessary; and it is to these principles we appeal, applying them to the uncontroverted facts of this case as stamping the attempted assessment as absolutely void.

It is, we think, well established that the action of the assessing officers, when completed according to the statutes, is a finality; at all events, so far as it relates to the value placed on the assessed property. In fixing these values, the assessors and the Boards of Review, if there be such boards, exercise a judicial or quasi-judicial function, and their conclusions are not open to review by any tribunal or court, unless otherwise expressly provided by statute. We must therefore, look to the assessment proceedings to determine whether or not there was the due process of law required by the Constitution.

If the facts, or any material facts are there conclusively established against the property owner, without the required notice and opportunity to be heard, due process of law is wanting. This

Court in Stanley vs. Supervisors of Albany, 121 U. S. 550 states this doctrine in clear terms:

> "In nearly all the states, probably in all of them, provision is made by law for the correction of errors and irregularities of asessors in the assessment of property for the purposes of taxation. This is generally through boards of revision or equalization, as they are often termed, with sometimes a right of appeal from their decision to the Courts of law. They are established to carry into effect the general rules of equality and uniformity of taxation required by constitutional or statutory provisions. Absolute equality and uniformity are seldom if ever attainable. The diversity of human judgments, and the uncertainty attending all human evidence, precludes the possibility of this attainment. Intelligent men differ as to the value of the most common objects before them—of animals, houses and lands in constant use. The most that can be expected from wise legislation is an approximation to this desirable end; and the requirement of equality and uniformity found in the constitutions of some states is complied with, when designed and manifest departures from the rule are avoided. To these boards of revision, by whatever name they may be called, the citizens must apply for relief against excessive and irregular taxation. This action is judicial in its character. They pass judgment on the value of the property upon personal examination and evidence respecting it. Their action being judicial, their judgment in cases within their jurisdiction, is not open to collateral attack. If not corrected by some of the modes pointed out by the statute, they are conclusive, whatever errors may have been committed in the assessment. As said in one of the cases cited, the money collected on such assessment cannot be recovered back in an action at law any more than money collected on an erroneous judgment of a court of competent jurisdiction before it is reversed." 121 U. S. 550

This doctrine is also stated by Judge Cooley in his work on taxation as follows:

> "Assessors exercise a quasi-judicial authority, and when property is to be taxed by value, the value must be determined by their judgment. If they fail to proceed in the performance of the duty, they may be compelled to act, but no court can decide for them what their judgment is or ought to be.
>
> These principles are not only applicable to the assessor proper, but also to that of the appellate boards, who review and revise their decisions, and they are well summed up by the Su-

preme Court of Massachusetts, in a case in which County Commissioners had declined to abate a tax on behalf of one, who claimed to have been over-rated. 'If the Commissioners', it is said, 'had refused to hear and determine upon the complaint, this Court would have issued a mandamus requiring them to do it. But the question whether the petitioner's taxes should be abated or not was a judicial question. And although it is within the province of this Court to require the Commissioners to decide the question, yet we have no power to decide it for them, or to determine what decision they shall make.

No judicial officer in determining a matter, legally submitted to his discretion, can ever be required to be governed by the dictates of any judgment but his own. We are clearly of opinion that in refusing to abate the petitioner's taxes, the Commissioners acted judicially, upon a subject of which they had final jurisdiction, and in which the exercise of this discretion cannot be revised by any other tribunal.' "—Cooley on Taxation 2nd Ed. p. 730, 3rd Ed. p. 1353.

That the doctrine of the Kentucky cases is the same is made clear by numerous decisions of its Court of Appeals. Odd Fellows Hall Association vs. City of Dayton, 25 Ky. Law Rep. 665; 76 S. W. 181; Ward vs. Beale, 91 Ky. 65; Henderson Bridge Co. vs. Commonwealth, 99 Ky. 623; Royer Wheel Co. vs. Taylor County, 104 Ky. 741; Coulter, Auditor vs. Louisville Bridge Co., 114 Ky. 42; Albin Co. vs. City of Louisville, 117 Ky. 895; Citizens National Bank of Lebanon, 118 Ky. 60; Slaughter vs. City of Louisville, 89 Ky. 112.

In Slaughter vs. City of Louisville, 89 Ky. 123, the Kentucky Court of Appeals says:

"Taxes are not debts. Debts are obligations, founded upon contract, express or implied. But taxes are impositions, levied for the support of the state government, or for county or city purposes. When they are imposed by authority they operate on the tax-payer "*invitum*". When they take the form of a percentage, there must be a valuation. The basis of this right to collect taxes from him consists in the valuation of his property; and to deny him the right to be heard in making this valuation, would be the taking of his property without due process of law. The valuation is the due process of law by which the right to take his property is begun; and the legislature having no judicial executive or ministerial power, cannot make the valuation; but the valuation must be made by some person authorized to exercise in this state ministerial power, and such person is the assessor." 89 Ky. 123.

We call attention here to the latter clause of this quotation as bearing on the assumption by the Circuit Court of the power of the assessor, commented on more fully in the latter part of this brief.

In the case of Turner vs. Town of Pewee Valley, 18 Ky. Law Rep. 757, in which the Town of Pewee Valley adopted the assessment made for the County of Oldham, in which it was situated, instead of making an assessment of the property within the town limits, the Court says:

> "No provision was made for the tax-payer to be heard, nor was he given any notice or opportunity to be heard, and to correct said list. Similar questions were decided in the case of Slaughter vs. City of Louisville, 89 Ky. 112; Davidson vs. Sterritt, 13 Ky. Law Rep. 176."

In this case the assessment was held to be void.

In Ward vs. Beale, 91 Ky. 65, the Court commenting on the attempt to revise an assessment made by the State Board of Equalization, says:

> "Besides as has been decided by this Court, the equalization of assessments among the several Counties by the Board of Equalization is paramount and final, and to allow such correction as is sought here would defeat the equalization, because, if appellant's correction is permitted, it would increase the burdens of other tax-payers of his County." 91 Ky. 65.

In Henderson Bridge Company vs. Commonwealth, 99 Ky. 645, in discussing the valuation of a franchise by the State Board, it was said:

> "It should be further said that the findings of this Board of Valuation and Assessment, partake of a judicial nature."

In the case of Royer Wheel Co. vs. Taylor County, 104 Ky. 743, the Court says;

> "There is no contest over the items assessed, the whole complaint being that the valuations placed thereon are xcessive. It was held in Ward vs. Beale, 91 Ky. 65, that there was no revising power to correct an assessment placed upon property after the board of supervisors have acted thereon, but after the opinion rendered in that case the legislature, by the act of March 15th, 1894, provided, that "if the tax-payer should feel himself aggrieved by the action of the board of supervisors,

he may appeal to the Judge of the County Court within ten days after the final adjournment of said board.' "

Again in the same opinion page 744;

> "Besides individual grievances as to the assessment, which are founded only on the opinion that the property has been assessed too high, furnish no ground for enjoining the collection of taxes due either the State or County. (Russell, Sheriff vs. Carlisle etc., 10 Ky. Law Rep. 285.) And the soundness of this position is evident. If tax-payers upon mere opinions of excessive valuation, can prevent by injunction the collection of the revenue due the State and County, confusion and inconvenience would speedily result therefrom." 104 Ky. 743 and 744.

So far as the Courts of Kentucky are concerned this question of the conclusiveness of the act of the assessing officers can, we think, not be considered an open question, since the ruling of the Court of Appeals in the recent case of Coulter, Auditor vs. Louisville Bridge Company, 114 Ky. 42, decided since this litigation began. The Court considering the action of the State Board of Valuation and Assessment, in raising on re-assessment the franchise of the Bridge Company for a former year, says:

> "If the Board of 1898 had fixed a value of one hundred thousand dollars on appellee's franchise, acting under the same circumstances, as shown in this case, and appellee had paid the tax, could appellant and his associates, constituting the present board, have ignored that action and re-valued and re-assessed the franchise? If they could, then there is no end to this thing, nor would there be to any assessment or listing of any property for taxation by any assessing board or assessor. We are of the opinion and hold that when the proper assessing officers, within the time and substantially in the manner provided by statute, have acted in considering and fixing the valuation upon property liable to assessment for taxation, and no relief has been obtained within the time allowed by statute for correcting this action, if erroneous, that action is final. The judgment and action of the assessor, based upon the legal evidence then obtainable and at hand, and as fixed by statute, when recorded in the proper tax lists, in the very nature of things should be conclusive upon the State as well as against the tax-payer." 114 Ky. 47.

Thus, if we be not in error, we deem it clear both as to Kentucky authorities and the law as expounded by this Court and the authorities generally, that the action of the assessing officers, whatever the form of the assessment, when completed, if it be of any force at all, becomes conclusive as to the value of the property embraced in the assessment; and that it is not open to further inquiry in any Court, and if in these proceedings the requisite notice and opportunity for hearing be not allowed, then the so-called assessment is void for want of due process of law. No other hearing can be the legal equivalent or substitute for the hearing the party to be affected is entitled to before the assessing officers, whose authority to value, and give relief against errors of valuation is full and exclusive.

Tested by these well established principles, we submit that there cannot be any reason to doubt that the assessment in this case, made as stated above, is absolutely void.

The assessment, such as it was,—the only one relied on here,—as appears conclusively from the pleadings, was made by the City assessor and entered on his books on the afternoon of December 31st., 1898, after the business hours of the day, without any notice to or conference with the plaintiff in error, and without knowledge on its part that such assessment or any assessment was intended; and immediately thereafter, the tax bills were placed in the hands of the delinquent tax collector, demand of payment made of plaintiff's president, and, on refusal, levy made on plaintiff's property; all done on the afternoon of the same day. We submit that no more flagrant violation of the Constitution could be conceived. Can it be that the defendant's allegations on pages 27 and 28, that for more than thirty days before the assessment certain "authorized officers and agents" of the City, not named or described, (but certainly not the assessor, who made the pretended assessment, nor any deputy of his (see reply record p. 39) had notified the plaintiff of a claim on account of omitted property, furnishing an itemized statement of property and values, materially different, however, from the assessment made, (reply p. 41,) and the threats on the part of this unnamed officer and agent, that the City Assessor would make an assessment, unless the taxes claimed were paid, can it be that such claims and threats, proceeding from such source, furnished any substitute for the notice required by law?

It is made clear by an opinion rendered by the Court of Appeals, since this litigation was in progress, that the regular Assessor, by himself, or deputy, is, (there being no statutory authority for a

change) the only officer who could make the assessment: City of Lexington vs. Lowry, 113 Ky. 763. Aside from that, it was the Assessor's act and his alone, upon which the defendants rely as an assessment. What does it signify what other officers or agents might say about an assessment in which they took no part and could assume no function? The plaintiff was entitled to such notice as would insure to it a right to be heard at a fixed time and place before the officer, who should act in making the assessment, or before a Board of Review. The notice should have been personal, specifying time and place, where no time and place for the hearing are fixed by the law, and above all, must furnish the party affected an opportunity and a right to be heard on the property to be assessed and its values; for that is the very object of the requirement of notice. It must be manifest, that the claim, alleged to be made by some unnamed officer of the City, not the Assessor or his deputy, and the threat by such unnamed officer that the assessor would make an assessment, unless the plaintiff listed his property and paid the taxes, cannot take the the place of that notice of time and place with the right to be heard before an afficer or board having competent power to give relief against a proposed assessment and valuation.

The City Assessor performed the acts, which are claimed to have been an assessment of the property. In that function he acted judicially. His act being called in question, of what significance could be the claim or threat of any other officer? The taxpayer had the right to be heard by the officer, who exercised the power of assessment, or who had the right to review the assessment. Even if other officers of the city had possessed the fullest powers, as they certainly did not (113 Ky. 763), it was the Assessor, who made the alleged assessment; and as to that act the plaintiff had no opportunity for hearing on the assessment made, either before him or any other officer or board of review. To use the analogies of a judicial proceeding, such claims and threats could no more dispense with the notice and opportunity for hearing in the assessment made or intended, than the demands of the party or his attorney for settlement of a claim or threats of suit could dispense with process on a suit when actually brought. Mere threat that action is intended is nothing. The taxpayer has a right to be heard in some form upon the assessment made upon the items of property and their value before the action is made final; such hearing to be either by the officer making it, or by some other officer or board with powers of review; and the time and place

at which he may be heard, must be brought home to him by personal notice, unless the law, of which he must take notice, fixes the time and place of hearing. This just reqirement, we think it clear, is not not satisfied by anything that occurred in this case, taking it on the most favorable view for the defendants' contention.

A notice is nothing unless provision is also made for hearing before a competent officer or board, for that is the whole object of the notice. There being no such notice or opportunity for hearing here, we submit that the assessment is void, an absolute nullity; and argue thence that all subsequent proceedings based or it to enforce a tax not established as due otherwise than by the void assessment were unauthorized and wrongful. Neither can the unwarranted assumption by the Circuit Court of the functions of assessor validate that proceeding, which before was void. The Court was appealed to by the plaintiff in the first instance to enjoin the collection of a tax based upon what was charged to be a void assessment. The defendants, by answer and cross-pleading, prayed the aid of the Court to collect the tax assessed. Refusing the relief prayed for, by both plaintiff and defendants, so far as it was based on the validity or invalidity of the alleged assessment previously made, and passing by the assessment as made, the Court itself assumes the office of assessor, and makes an assessment of its own, and gives judgment for the tax thus assessed by the Court for an amount, say about $5,000.00 less than the tax due under the controverted assessment, if anything were due at all. We submit that theCourt thus goes entirely outside of its jurisdiction. It goes without saying that the right of the City to the affirmative relief granted upon its cross-action must be tested by precisely the same principles, as would determine its right to such relief had it been sought in an orginal suit, brought by it for the collection of the tax levied on the assessment in controversy. The whole question, therefore, is whether the alleged assessment was such an assessment as could constitute the basis of any enforceable tax claim at all. If there was no valid assessment theCourt had no power to make one. No such power is conferred by statute, and the authorities, so far as we have seen them, deny any such power to the Courts. Certainly such power does not pertain to the Courts of Kentucky; Palmer vs. McMahon 133 U. S. 669; Slaughter vs. City of Louisville, 89 Ky. 123, and authorities above cited.

Until a valid assessment is made by an authorized officer, the city or municipality has no standing to enforce any claim, either by

summary proceedings or by suit and judgment. The assessment is, and, from the very nature of the case, must be the first step and the very foundation of all proceedings to collect an ad valorem tax. The part of the tax to be paid by each tax payer cannot be known either to himself or to the city until an assessment is made, ascertaining the property and valuation put upon it. This is the very foundation of all the proceedings to collect the tax; and just as no tax can be enforced where there is no assessment at all, so no tax can be legally enforced where the proceedings for assessment are void. Indeed, it seems a truism to say that a thing which is void cannot, in any case count for anything. Judge Cooley lays down this doctrine, citing numerous authorities, to-wit:

> "An assessment, when taxes are to be levied upon a valuation, is obviously indispensable. It is required as the first step in the proceedings against individual objects of taxation, and is the foundation of all which follows it. Without an assessment, they have no support and are nullities. The assessment is, therefore, the most important of all the proceedings in taxation, and the provisions to secure its accomplishing its object are very full and particular."—Cooley on Taxation, 3rd Ed., p. 597.

Among the numerous authorities cited by the author in support of this doctrine is the Kentucky case of Slaughter vs. City of Louisville, 89 Ky. 112, cited above, which, with the other Kentucky cases cited, besides supporting the doctrine of the text in the strongest manner, covers very satisfactorily nearly all the points of this case; and especially covers the principle of the lack of power in the Court to change the assessment or to make an alternative one. We would hence infer that the proceedings the defendants were taking to collect the tax in this case,by the summary methods allowed by law for the collection of taxes due to the city, were illegal and wrongful; and ought to be perpetually enjoined; and that the Court's assessment is unauthorized, and a nullity. But the Courts on the application of the city have done more than refuse the injunction; for on the defendant's complaint by cross action, they have given jndgment for the tax, and for its enforcement by decree of sale.

Can it be a sound principle, as stated by the Court of Appeals, that the presumption obtains on the alleged assessment that the officer making it did his duty, and hence that the burden of proof is

on the plaintiff, arising from this mere action of the officer, to make out his whole case, and to show that nothing was assessed or assessable? From the single fact that an assessment is placed on the books of the Assessor and passed over for collection tothe delinquent tax collector, the Court raises a presumption, first of the sufficiency of the assessment itself, and then of every other material fact in the case; and this principle is made the keystone of the Court's whole argument.

We respectfully submit this course of reasoning to be to the last degree illogical. It is clear under our system that if the assessment be valid for any purpose, it is to a certain extent final and conclusive of the rights of the tax -payer; and under ordinary circumstances cannot be reviewed on the question of value by any Court or tribunal. If the so-called assessment had no other force than is assigned to it in the opinion of the Court of Appeals, of transferring the burden of proof and imposing it on the tax-payer, we submit that to give even that effect to a void assessment, is in contravention of the constitutional principles we invoke. So that as we contend, if it be held that the assessment in this case was lacking in the qualities to make it a legal assessment, the defendants' entire claim is without any foundation whatever, and any attempt to enforce it is illegal and wrongful.

With one stroke theCourt, in the presumption it raises, goes far to weaken, if it does not sweep away all the appointed safeguards. But even if this presumption be allowed as stated, we nevertheless submit that the facts of this case, as conclusively established by the pleadings, are entirely sufficient to overcome this *prima facie* presumption declared to obtain in such case.

In this connection we recall to the Court's attention the section quoted above from the statutes of Kentucky relating to assessments in cities of the second class, containing all of the provisions for original assessments, and also of assessments of omitted property.

The closing sentence of section 3179 is all in the Statutes specifically relating to assessments for former years, to-wit:

"Whenever the Assessor shall ascertain that there has, in any former year or years, been any property omitted, which should have been taxed, he shall assess the same against the person who should have been assessed with it, if living, if not, against his representative."

We have not thought it incumbent on us to determine the question which may be made on this statute, whether, the provision just

quoted was intended to stand alone as to the assessment of omitted property; or whether it was intended that the action of the assessor should go through the same forms and be subjected to the same processes to ascertain its justness and correctness, including the Board of Review andother provisions to secure a proper result, as is provided in the case of original assessments. If we should pass an opinion on that point, we should be disposed to say that the statute intends that the act of the assessor in assessing property omitted for former years should be subjected to the same scrutiny, and should go through the same forms as is provided in the case of original assessments. The act seems to be capable of this construction and this construction alone can make it comply with the law. The assessor however, in this case evidently adopted the opposite view. We submit that the proceeding here taken was equally void in either case, whether the failure to provide opportunity for hearing was due to the vice of the statute or to the officer's misinterpretation of the statute. The Court will not fail to note the contrast between the summary proceedings used in the case at bar, and the careful provisions of the statute providing for the assessments within its scope. The statute gives large powers to the Assessor to ascertain the facts affecting the assessment. It provides the fullest notice and the right and opportunity to the tax payer to be heard at all proper stages of the proceedings, extending through a period of several months. Is it not anomalous that a result, reached with so much care and attention in the original assessment, can be reversed by the action of a single officer in the seclusion of his own office without notice of any kind to the person affected by the proceeding?

We have endeavored thus far to confine ourselves strictly to the single question of the vaildity of the ssessment, tested by the section of the Constitution referred to. We do not desire now to depart from that line of argument. But the Court of Appeals seems to us to bury the constitutional principle under the so called equities of the case. We discussed all matters pertaining to the merits of this case before the state courts orally and by brief. We respectfully ask the Court not to accept the conclusions of the State courts on these points without careful examination of the record. In our briefs and arguments we earnestly contended that there had been no omissions of property. Whether there had been or not such omissions was an inquiry subsequent in point of law and reason to the determination,

that there had been a legal assessment. If it had been determined, that there never had been any assessment at all, or which is the same thing, that the alleged assessment was void, then there was and is no room for the inquiry whether the plaintiff owes the tax and ought to be compelled to pay it, assessed or not assessed. The plaintiff contends that the question as to whether property had been omitted in back years, and what property and its values, were questions to be determined exclusively on the proceedings for assessment; and until a legal assessment was made and completed, (which, if properly conducted, would have been a finality) the city had no claim to collect any tax from plaintiff, either by the summary proceedings allowed for levy and sale of property, or by suit and the judgment of the Court. If the defendants had levied on plaintiff's property without any pretense of assessment proceedings, ought not the summary proceedings for collection to have been enjoined? And if the case should come into the Courts, ought such claims to be enforced by judgment and decree of sale, as is here done? If such claim on the part of the City were not admissible, when there is no assessment, it is equally inadmissible, when the so called assessment is void. Let it not be forgotten by the Court also on the question of equities, if the Court should deem it proper to give them consideration, that the judgment appealed from does not merely refuse injunctive relief to the plaintiff, but likewise renders judgment for the tax on the complaint and cross action of the City. If this Court shall, however, go into the question of what taxes were due, as part of the question of doing equity, we submit that notwithstanding the judgment of the state courts, and outside of all question of assessment, the judgment appealed from does the plaintiff grave injustice, and that the plaintiff was entitled to the whole relief asked for. In the petition for re-hearing, we called the attention of the Court of Appeals to certain errors, which we thought and still think are manifest on the record, but without any success. Our main contention, however, is that the so called assessment was void ab initio, and could in no wise be made the basis of any rightful claim; and that it is not in the power of the Courts to pass on the question of what property and values should have been assessed; that being a matter within the exclusive power of the assessing officers.

Before concluding this brief, we will refer to one other suggestion made by counsel for defendants in error in their arguments in the State Courts. We do not know whether the suggestion will be

repeated here. Counsel admitted, as could not be denied, that notice of some sort was and is necessary to an original assessment, but contended that in asmuch as the plaintiff was then notified to give in all its property and *failed in that duty*, that it was not entitled to a notice of the proposed assessment of the omitted property. We confess that we hardly know how to deal with this objection. We think the attempted distinction is not supported by reason or any authority. Is it not a plain begging of the question–sentence first and trial afterwards? If the contention of counsel be allowed, then the assessor may, at any time, assess against any person property alleged to be omitted, and the person affected can have no relief. We prefer in reply to use the language of the Missipssippi Court in a case quite similar in many respects to the one in hand, and which we regard as a very strong and well considered case on all the points here involved.

> "We are not certain that we appreciate the precise position of counsel. The assumption runs throughout their briefs that a person owning property, which has not been assessed, is a delinquent who cannot complain of any legislation having for its purpose the taxation of the property. Counsel do not expressly declare that such persons are not entitled to the protection of the Constitution, but they suggest that having failed to obey the law by giving in their property for taxation, when all other property was assessed, such delinquents should be dealt with at the discretion of the legislature. But the fact that such persons may have violated the law, either neglecting or willfully refusing to return their property for taxation, is no reason why constitutional safeguards provided for the protection of all classes should be destroyed or ignored. The question is not one of policy but of power; and if it is competent for a legislature to dispense with an assessment of property as to one class, it would be equally within its power to dispense with it for any or all other classes." Adams vs. Tonella '97 Miss. 701; 22 L. R. A. 346–350.

We submit that the judgment of the state Court should be reversed with directions to award an injunction against the collection of the assessed tax.

Respectfully submitted,

JOSEPH D. HUNT,
GEORGE R. HUNT,
JOHN T. SHELBY,
JOHN R. ALLEN,
Counsel for Plaintiff in Error.

CITATIONS.

Kentucky Statutes, Sections 3179,3180,3181,and 3182;
Cooley on Taxation, 2nd Ed., pp 362 and 363; 3rd Ed., pp 626—629;
McMillan vs. Anderson, 95 U. S. 37;
Davidson vs. New Orleans, 96 U. S. 97;
Hager vs. Reclamation District, 111 U. S. 701;
Spencer vs. Merchant, 125 U. S. 345;
Palmer vs. McMahon, 133 U. S. 660;
Lent vs. Tillson, 140 U. S. 316;
Pittsburg, Cincinnati etc., Ry. Co. vs. Backus, 154 U. S. 421;
Winona & St. Peter Land Co. vs. Minnesota, 159 U. S. 537;
Stanley vs. Supervisors of Albany, 121 U. S. 550;
Cooley on Taxation, 2nd Ed. p. 730; 3rd Ed. p. 1353;
Oddfellows Hall Association vs.City of Dayton, 25 Ky.Law Rep. 665; 76 S. W. 181;
Ward vs. Beale, 91 Ky. 65;
Henderson Bridge Co. vs. Commonwealth, 99 Ky. 623;
Royer Wheel Co. vs. Taylor County, 104 Ky. 741;
Coulter, Auditor, vs. Louisville Bridge Co., 114 Ky. 42;
Albin Co. vs. City of Louisville, 117 Ky. 895;
Citizen's National Bank of Lebanon vs. Commonwealth, 118 Ky. 60;
Slaughter vs. City of Louisville, 89 Ky. 112;
Cooley on Taxation, 3rd Ed. p. 597;
Adams vs. Tonella, 70 Miss. 701; 22 L. R. A. 346, 350.

FILE COPY.

Office Supreme Court, U. S.
FILED.
OCT 26 1906
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 55.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, TRUSTEE OF CLARA D. BELL, PLAINTIFF IN ERROR,

vs.

THE CITY OF LEXINGTON, KENTUCKY, AND E. T. GROSS, DELINQUENT TAX COLLECTOR FOR SAID CITY, DEFENDANTS IN ERROR.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

JOSEPH D. HUNT,
GEORGE R. HUNT,
JOHN T. SHELBY,
JOHN R. ALLEN,
Counsel for Plaintiff in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 23599

(19,812.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 55.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, TRUSTEE OF CLARA D. BELL, PLAINTIFF IN ERROR,

vs.

THE CITY OF LEXINGTON, KENTUCKY, AND E. T. GROSS, DELINQUENT TAX COLLECTOR FOR SAID CITY, DEFENDANTS IN ERROR.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

On pages 5-8 of the original brief for plaintiff in error are printed the statutory provisions, being sections 3179-3182, inclusive, Kentucky Statutes, relating to assessment of property in cities of the second class. The provision as to back or retrospective assessments is the concluding sentence of section 3179, on page 6 of the brief.

On pages 22-23 of said brief, in referring to the above provision, this language was used:

> "We have not thought it incumbent on us to determine the question which may be made on this statute, whether the provision just quoted was intended to stand alone as to the assessment of omitted

> property, or whether it was intended that the action of the assessor should go through the same forms and be subjected to the same processes to ascertain its justness and correctness, including the board of review and their provisions, to secure a proper result, as is provided in the case of original sections. If we should pass an opinion on that point we should be disposed to say that the statute intends that the act of the assessor in assessing property omitted from former years should be subjected to the same scrutiny and should go through the same forms as is provided in the case of original assessments. The act seems to be capable of this construction, and this construction alone can make it comply with the law."

In the preparation for the oral argument of this cause after our briefs had been printed, we became satisfied that this expression of opinion was incorrect, and that it was not possible to construe the back-assessment provision as requiring the same forms of notice and opportunity to be heard as is provided in cases of original assessments. Upon the argument, therefore, we directly raised the question of the constitutionality of the back-assessment provision upon the distinct ground that it did not contemplate a compliance with the requirements for notice and opportunity of being heard provided in cases of original assessments.

A careful comparison of the back-assessment clause with the rest of the statute will, we submit, make this evident. That portion is in these words:

> "Whenever the assessor shall ascertain that there has in any former year or years been any property omitted which should have been taxed, he shall assess the same against the person who should have been assessed with it, if living; if not, against his representative.

It will be seen that this back assessment may, therefore, be made by the assessor "whenever" he discovers the fact of omission, whether during the period when he is making his

regular assessment for the current year or afterwards, say in March, April, May, June, and so on. There is no limitation as to the time when he may perform this act. The provisions in the cases of original assessment as to notice to the taxpayer and opportunity to be heard before the assessor are all limited in point of time to the period commencing September 1 and ending December 1, at which time the assessment books pass out of the control of the assessor and are delivered to the auditor. The provisions of section 3181, relating to the board of equalization, show that that board meets only in the month of January, and that its existence is limited to a prescribed time, and the whole language of the section indicates most clearly that the functions of that board, as therein prescribed, relate entirely to assessment books which were completed by the assessor on the first of the preceding December and turned over to the equalization board in the month of January. That it was not contemplated that this board of equalization should have revisory power over the retrospective assessments for former years made by the assessor is made further evident by the fact that no power exists to reconvene that board for any purpose whatever beyond the first meeting of the general council in March. It then becomes wholly *functus officio* and incapable in point of fact of acting upon any retrospective assessment made by the assessor after that time, even if it had been contemplated that it should ever have such power.

Section 3188, Kentucky Statutes, in referring to the power of the delinquent tax collector in whose hands the tax bill in this proceeding was placed, provides as follows:

> "He shall have power to sue out in any justice's court in the county an attachment on said tax bills, and the proceedings shall be the same as attachment proceedings for the collection of State taxes."

Section 4189, Kentucky Statutes, relating to attachment proceedings for the collection of State taxes, provides as follows:

> "That the delinquent shall have the right to defend by showing, first, that the property has never been assessed, but it shall not be sufficient to show a defective assessment merely; second, that the property is not subject to taxation; third, that the taxes have been paid."

The entire section in full is as follows:

> "The court may hear evidence, and, in its judgment, shall provide for the payment of the State revenue, the county levy due; and, if there be other taxes due, the court shall direct the payment thereof, provided the delinquent shall have the right to defend by showing, first, that the property has never been assessed, but it shall not be sufficient to show a defective assessment merely; second, that the property is not subject to taxation; third; that the taxes have been paid."

In this proceeding, however, the delinquent tax collector did not resort to the method of collection by attachment above referred to, but to a direct levy upon the real estate of the defendant under the provisions of section 254 of the Revised Ordinance of the City of Lexington, Kentucky, printed on page 29 of the record, under which method there is no way provided for the taxpayer to contest the validity of the tax proceedings upon any ground whatever.

The trustee plaintiff in error was, therefore, in this instance compelled to resort to injunction proceedings in a court of equity, in which, as has been fully shown in the briefs and upon the oral argument, the court had the right to investigate the validity of the assessment in all respects *except as to the question of value.*

It follows, therefore, from the foregoing, that, so far as the question of the value of the property included in this

back assessment is concerned, there was absolutely no method provided, either by statute, law, or recognized in the jurisprudence of Kentucky, by which that matter could be revised; and that if the trustee did not in fact have an opportunity of being heard before the assessor himself in the process of making this retrospective assessment, he was denied the right to be heard upon one of the most material matters entering into the assessment, which is a denial of due process of law.

Respectfully submitted,

JOSEPH D. HUNT,
GEORGE R. HUNT,
JOHN T. SHELBY,
JOHN R. ALLEN,
Counsel for Plaintiff in Error.

No. 55.

Supreme Court of the United States

19,812

Office Supreme Court, U. S.
FILED.
OCT 23 1906
JAMES H. McKENNEY,
Clerk

THE SECURITY TRUST & SAFETY VAULT COMPANY OF LEXINGTON, KY., Trustee of Clara D. Bell, - - - Plaintiff in Error

Vs.

THE CITY OF LEXINGTON, and E. T. GROSS, Delinquent Tax Collector of said City. - Defendants in Error

Brief for Defendants in Error.

J. R. MORTON,
E. P. FARRELL,
GEO. C. WEBB,
GEO. S. SHANKLIN,
Attorneys for Defendants in Error.

Press of James E. Hughes, State Printer, Lexington, Ky.

Supreme Court of the United States.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, TRUSTEE OF CLARA D. BELL,.....*Plaintiff in Error.*

vs.

THE CITY OF LEXINGTON AND E. T. GROSS, DELINQUENT TAX COLLECTOR OF SAID CITY,.....*Defendants in Error.*

BRIEF FOR DEFENDANTS IN ERROR.

Plaintiff in error, The Security Trust and Safety Vault Company, of Lexington, Kentucky, as Trustee of Clara D. Bell, was the owner and in possession of a large and profitable estate, exclusive of real property, upon the dates when assessments for taxation for the years 1894 to 1898 inclusive were required to be made for the use and benefit of the City of Lexington. The value of the personal estate held by it as such Trustee, is as follows:

For the year 1894.....$510,662.90
For the year 1895..... 511,905.50

For the year 1896..... 527,634.65
For the year 1897..... 539,624.98
For the year 1898..... 498,181.54

It appears that the plaintiff in error for the years 1894, 1895 and 1896, omitted altogether to report for assessment any tangible personal property held and possessed by it during these years; but in 1897, the tangible property was assessed as omitted and taxes paid thereon. The entire assessment for taxation of intangible personalty made by the plaintiff in error for the years in question, are as follows:

For 1894, valuation under equalization law.	$294,000.00
For 1895, amount of bonds.....	300,000.00
Notes secured by mortgage.....	2,700.00
For 1896, amount of bonds, notes, mortgages and other securities....	300,000.00
For 1897, amount of bonds, notes, mortgages and other securities....	303,000.00
For 1898, amount of bonds, notes, mortgages and other securities....	280,000.00

(Pages 34, 35 and 36 of the record.)

Adding to the above amounts of intangible property, the values of the tangible property for said years, which were comparatively small, and deducting the results from the total value of personal property held by the plaintiff in error for said years, we find the difference, which represents the amount of personal estate held by it which was neither assessed nor taxed for said years, to be as follows:

In 1894	$210,562.90
In 1895	202,605.00
In 1896	222,034.65
In 1897	229,024.98
In 1898	214,581.54
Aggregate amount	$1,078,806.00

This result was disclosed in 1898 by examination of the inventory, receipts and settlements filed by the plaintiff in error in the County and Circuit Courts of Fayette County, (pages 42 to 67 inclusive of the record.)

In the latter part of 1898 the City of Lexington notified the plaintiff in error that it had omitted from assessment and taxation for the five preceding years, a large portion of the trust estate held by it; and further notified it that the assessor of the City of Lexington would proceed to assess as omitted property so much thereof as was subject to taxation, unless the property was listed by it for such purpose. The plaintiff in error did not respond to this demand and notice; but, with the full knowledge on its part of the purpose of the assessor, as aforesaid, failed and refused to list the alleged omitted property, or any part thereof, or to pay the taxes thereon.

After waiting about thirty days the City Assessor proceeded to make an assessment of the property omitted from assessment by the plaintiff in error, and entered the same on the books in his office, as shown by exhibits 1, 2 and 3 and pages 30 and 31 of the record. Tax bills were duly made out together with proper receipts, and placed in the hands of the Delinquent Tax Collector, who duly tendered to the plaintiff in error the receipts, and de-

manded payment of the taxes. Payment being refused, the Delinquent Tax Collector proceeded to levy upon the real estate held by the plaintiff in error. Thereupon the plaintiff in error brought this suit and secured a temporary injunction against the collection of the taxes. The petition contained four paragraphs. Demurrers were sustained to three, and overruled to paragraph 3. The defendants in error filed their answer and counter-claim. Upon the completion of the pleadings, two issues were presented. Upon these two issues proof was taken, the cause was submitted for hearing and judgment was rendered. By this judgment the Circuit Court reviewed the assessment made by the City Assessor. It corrected such errors in the assessment as was necessary; adjudged the exact property held by the plaintiff; what portion was taxable, and what not taxable, and gave judgment for the amount of the tax.

This judgment was reviewed by the Court of Appeals and confirmed.

The real question which the Supreme Court will consider is whether the plaintiff in error has been deprived of its property without due process of law, in contravention of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

I.

Under the decisions of this Court we do not deem it necessary to discuss whether the State Courts of Kentucky erred in overruling plaintiff's demurrers, or

whether the courts of Kentucky erred in holding that the burden of proof was upon the plaintiff in error and not upon the defendants. Mr. Justice Gray, in Central Land Co. vs. Laidley, 159 U. S. 103, concisely states the proposition as follows:

> "When the parties have been fully heard in the "regular course of judicial proceedings, an erroneous "decision of a State Court does not deprive the unsuc- "cessful party of property without due process of law "within the Fourtetenth Amendment of the Constitu- "tion of the United States,"

and citing in support of that proposition numerous decisions of this court to the same effect.

The decision of the Kentucky Court of Appeals was correct as will be fully shown by a careful examination of the decision itself.

The first material point to be considered in that decision was as to the burden of proof, and upon this question Judge Barker, of the Court of Appeals, in his decision in this case, says:

> "The first question with which we are confronted "is, upon whom was the burden of proof in this action? "Appellant urgently insists that it was incumbent "upon the city to allege and prove every essential fact "necessary to make out the validity of its tax-claim. "This position is untenable. It is true, the presump- "tion will be indulged as an original proposition, that "the regular assessmens for the years in question were "valid, and that the officers making them performed "their duty; but this presumption, when the officer

"under authority of law and his oath of office makes "a retrospective assessment, will be overcome and re- "placed by the new presumption that, in making the "retrospective assessment, he also did his duty. It "was as much the duty of those having the matter in "charge to make retrospective assessment of omitted "property, as to make the regular assessment; and the "same presumption of regularity and validity will "attend the latter official acts as attended the first. "The burden of proof, therefore, when one comes into "equity to enjoin the collection of a tax, which has been "officially ascertained to be due, is upon the plaintiff "to make out his whole case, and to do this he is re- "quired to allege and prove, if controverted, every "fact, whether it be negative or affirmative, necessary "to show the validity of the tax assailed." (See printed record, p. 112.)

The record in this case shows conclusively that the plaintiff in error refused and failed to give in a large amount of personal property upon which it should have paid taxes, and when brought to task by the city authorities in their effort to make it bear its proper proportion of taxes, has resorted to technical objections of all kinds to escape the payment of its just proportion of taxes.

Upon this point the Court of Appeals says:

"It was incumbent upon the appellant to make a "clear and full disclosure by items of all property sub- "ject to taxation it held in trust for Clara D. Bell, and "it in no wise discharged its duty to the city by im- "posing upon the officer an aggregate valuation, with- "out the items of which it consisted, and without being "sworn to as by law required. The officer, too, neglect-

"ed his duty in accepting illegal return; but his laches "cannot avail the appellant." (P. 113 of record.)

That it failed in its duty as above stated in the decision of the Court of Appeals, is shown by these facts. In the answer and counter claim of the defendants in error the following allegations appear:

"The total value of personality held by plaintiff "subject to taxation by the City of Lexington for 1894 "was not less than $510,662.90." (Printed record, p.22)

"The value of the assessable property held by "plaintiff on date for assessment for the year 1895 "was not less than $511,905.50." (Printed record p. 22)

"The value of all the personal property held by "plaintiff subject to taxation by the City of Lexington "for the year 1896 was not less than $527,634.65." (Printed record p. 23.)

"The total value of personalty subject to assess- "ment for the year 1897, and held by plaintiff, was not "less than $539,624.98." (Printed record, p. 23.)

"The value of the taxable personalty belonging to "said estate as of date of assessment for 1898 was not "less than $498,181.54." (Printed record, p. 23.)

The above figures, as we have stated, are derived from the appraisement, receipt given for the trust estate by the plaintiff in error, and from its settlements made as required by law in the Fayette County Court from time to time, as found on pages 42 to 68 of the record, inclusive. It is only a matter of calculation to determine from this receipt and these settlements the exact property which was in the hands of the trustee at any particular time. There can be no question as to the amount and value of

this property being shown by the record; for the plaintiff in error, by it's evasive and insufficient denials, admits the truth of the above statements. As to the amount and value of the property the plaintiff, in error, in its reply, says:

> "Plaintiff denies that it had in its hands as Trus-
> "tee, or in its control *all* of the property alleged in
> "the answer, etc. * * * * * It denies that the
> "value of the assessable property, at the date for the
> "assessment of 1895 was worth as much as $511,905.50,
> "or that the value for 1896 was as much as $527,634.65,
> "or for 1897 was worth as much as $5537,624.98, or for
> "1898, as much as $498,181.54." (See record, pp. 39 and 40.)

Manifestly this attempted denial is no denial at all, but is really an admission of the number and amount of bonds, and the values, as alleged by the defendant. The Kentucky Code of Practice, Sec. 126, provides that:

> "Every material allegation of the pleadings must,
> "for the purposes of the action, be taken as true, un-
> "less *specifically* traversed."

and this is the general rule of practice throughout the United States. Pomeroy on Code Remedies, page 623.

It must, therefore, be apparent to the Court that the appellant has put itself in the position of an evader of taxes who seeks by a technicality to escape payment of taxes, and who, when caught, and the facts proven by its own receipts, appraisements and settlements of the estate, still fights to retain the money justly due the City of Lexington for taxes.

Upon this state of facts, appearing from the record, upon such an issue, the Court of Appeals of Kentucky reached its conclusion.

The Supreme Court of Indiana, in the case of Reynolds, Auditor, et al., v. Bowen, 36 N. E. Rep., 756, reviews a case almost identical as to facts with the case now under consideration; and the language of the decision puts so clearly the argument we would now present to this Court, that we ask the Court's pardon for quoting from that decision at length:

"From the very nature of the case it may well be "that the Auditor can give only a general description. "The property owner himself is the one who can give "a particular description of his own property. This, "the text of the law requires him to do, in the first "place, when he makes out his particular list and hands "it to the Assessor. * * * * The power to assess "is a summary power to secure uniform and just taxa- "tion, and protect the revenues of the State, "both as to unscrupulous and dishonest evasion of the "law, and also in the interest of honest taxpayers, it is "necessary that assessment statutes should be liber- "ally interpreted in aid of the taxing power. Where "title is sought through a tax title the statute is strictly "construed in favor of the owner, but not where the "owner is attempting to evade the payment of his just "taxes. It was never intended that proceedings before "the Auditor, such as those objected to in this case, "should be conducted with all the precision and formal- "ity of an action in Court * * * * * Appellee "comes into a court of equity and asks that equity be "done him. He should, therefore, first show that he

"has himself done equity. His objections made before "the Auditor and repeated on this appeal are (1) that "the notice was not sufficiently specific, (2) that for "each of the years named the decedent had subscribed "and sworn to a tax list made out in due form of law "and handed it to the assessor wherein the decedent "returned certain credits and money loaned, and the "valuation made by the decedent was approved by the "assessor, duly returned to the Auditor, submitted to "the County Board, again approved, and so placed "upon the duplicate. * * * * * * * * *

"In short, the defense is that the decedent made his "own assessment, swore to it, the assessing officer ac- "cepting the assessment so made, and now there is no "help for it. The appellee makes no pretence that the "assessment was fair or just, or that the decedent had "in fact given in all of his property for taxation. He "says, in effect, to the State: 'The thing is done, what "are you going to do about it?' * * *(It) can "hardly avail to justify a property owner who comes "into a court of equity admitting substantially that "he has not made an honest return of his property for "taxation and not denying that the assessment as cor- "rected by the Auditor is a just one. Might not the "State in such case meet the taxpayer on his own "ground and reply. 'The assessment is now corrected "and placed upon the duplicate. Have you any reason "to show why it is not a just assessment?' * * * * *

"There was no averment that the personal estate of "the plaintiff liable for taxation was less in value than "the corrected assessment, none that his own sworn "list was correct, nothing from which the conclusion "could be drawn that the increased assessment was not "entirely proper and correct; that it was only claimed "that the plaintiff was not notified of the increase, and

"that there was no proof before the Council. In a "word, that the plaintiff sought the extraodrinary pro- "cess of injunction from a court of equity to protect "him from paying a tax which, according to his own "showing, it does not appear but that he ought in jus- "tice and conscience to pay. There was no equity "whatever as the basis of his application."

The court then quotes Judge Frazier in the case of Jones v. Summer, 27 Ind. 510: "It would be "difficult to imagine a case more utterly barren of "equity. The property owner committed serious errors "in his lists, which, in conscience and as a good citizen, "he ought voluntarily to have corrected; but he did "not. They were corrected; and now he asks to be "secured an advantage as the fruit of his own blunder, "merely because the correction, though just, was "directed by the wrong authority, and without notice to "him.' The able and upright Judge who decided that "case continues: 'The decision of this Court hereto- "fore in restraining taxes has gone to the utmost ex- "tent of authority. If we should now take the step "required in this case to sustain the ruling below, we "would be without the support of either reason or "precedent; and the collection of public taxes would, "on the warrant thus given, be constantly arrested at "the instance of those who seek to escape their just "share of public burdens.'" (Reynolds, et al. vs. Bowen, 36 N. E. Rep. 756.)

A person who seeks the aid of a Court of Equity against the payment of a tax must come with not only clean but open hands, and if he owes any tax the court will compel him to pay it.

Clark vs. Louisville Water Works, 90 Ky. 524.

In this case the Court of Appeals of Kentucky says:

"The rule then is, when one comes into equity ask-
"ing for relief against taxation, it is incumbent upon
"him to show clearly that he had paid or is willing to
"pay all that he justly owes toward the public burden;
"he must make a full, fair and complete disclosure of
"the property he has subject to taxation; so that the
"court may judge as to whether or not he is unjustly
"taxed; he must come not only with clean hands, but
"with open hands." (See record, p. 116.)

Having shown the justice of the decision of the Court of Appeals, we submit that it was based upon facts showing due process of law. Due process of law means notice, and as opportunity to be heard in such manner as adapted to the exigencies of the case. This requirement of due process of law we say was complied with in this case in three respects (1) *by the public notice which was given in accordance with the Statute;* (2) *by actual notice before the omitted property was assessed;* (3) *by a full hearing given to the plaintiff in error in this suit as to the justice of such assessment.*

II.

NOTICE BY PUBLICATION REQUIRED BY STATUTE.

The City of Lexington, under the Constitution of Kentucky, is a city of the second class, and its charter is

a part of the general law of Kentucky contained in Kentucky Statutes. We file as a part of this brief marked Appendix A, section 3179. Section 3179 of Kentucky Statutes (see Appendix A) provides as follows:

"On or before the first day of September in each "year the assessor shall give public notice by adver- "tisement in the official newspaper of the city, and by "handbills posted through the city, that all persons "owning, or having in their possession, or under their "control, as agent, guardian, committee, executor, ad- "ministrator, curator, trustee, receiver, commissioner, "or otherwise, tangible or intangible property of the "15th day of September following, are required, " on or before the first day of October, to give him "a true and complete list of the same with "true cash value thereof, as of the fifteenth "day of September, under oath, upon forms "to be furnished on application by said assessor at his "office * * * * * * The assessor shall keep "his office open, and be himself, or have a deputy, in "attendance during the hours from 8 a. m. to 6 p. m., "or such other additional hours as may by ordinance "be fixed from the fifteenth day of September to and "including the first day of October, except Sundays "and legal holidays. * * * The assessor shall "assess personal property in a separate book, in which "he shall separate tangible from intangible property. "The word person as used herein shall mean natural "and artificial persons, and the duties enjoined on "them shall, in the case of artificial persons, be per- "formed by the chief officer, or agent, in the city at the "time. Whenever the assessor shall ascertain that there "has, in any former year or years, been any property

"omitted which should have been taxed, he shall assess "the same against the person who should have been "assessed with it, if living, if not, against his repre- "sentative."

The statute contains the whole system of taxation, both as to yearly taxes and omitted property, when discovered, and is part of one act of assessment.

There can be no question but that this statute provides a notice which fully meets with the rulings of this Honorable Court, and that the statute and system itself is not in contravention of the Fourteenth Amendment of the Constitution of the United States.

The assignment of errors filed by plaintiff in error does not contain one expression which would possibly put in issue the question as to whether the legislature had failed by this Statute to provide for proper notice or proper hearing.

It has been repeatedly decided by this Court that publication of notice, as is provided in the statute cited, is ample and sufficient to meet the requirements of due process of law, and that the sittings of the officer at stated times and places takes taxation out of the inhibition of the Fourteenth Amendment.

Davidson vs. New Orleans, 96 U. S., 97.
Hager vs. Reclamation District, 111 U. S. 701.
Kentucky Railroad Tax Cases, 115 U. S., 321.
Cooley on Taxation, 3d edition, vol. 1, p. 61.

It is conceded that the City Assessor of Lexington for each of said years properly advertised his call for

assessments, both in the official newspaper of the City of Lexington and by hand bills, and it is likewise conceded that he sat at the time in the place fixed by law for receiving assessments, and that the plaintiff in error, pursuant to notice, did list certain property for taxation, omitting, however, a large portion of the property held by it. It filed a statement which we contend was its hearing and its side of the case. Subsequently, it was discovered that such statements were false, and that the plaintiff in error had not given in all of its property. Had it given a true and correct report of the property in its possession, as required by law, under oath, the city would have received each year the revenue to which it was entitled.

That when it submitted these statements it had its hearing, is supported by Justice Matthews' language in Kentucky Railroad Cases, 115 U. S., p. 321, where he said:

> "This return made by the corporation through its "officers is the statement of its own case in all the "particulars that enter into the question of the value "of its taxable property."

The plaintiff had its hearing. It had failed in its duty as required by the notice. The city had the right, under its charter, to assess the property omitted. As to the method necessary in such a case, Mr. Cooley says:

> "Since assessments for taxation do not constitute "judicial judgments such as can be set aside only upon "notice and before opportunity to be heard, a reassess-

"ment of grossly undervalued property so as to make "such property bear the same burden it would have "borne if the true assessment had been made in the "first instance, does not violate the constitutional re- "quirement of due process of law." (Cooley on Taxation, 3d edition, Vol. 1, p. 65.)

This principal is strongly stated and supported by the case of Weyerhauerer vs. Minnesota, 176 U. S. 550. If this be the law, as laid down in the above cited case and by Mr. Cooley, then the city had the right to assess this omitted property, even under the published notice, as required by the Statute.

There can be no question, therefore, that the system provided by the Statutes of Kentucky for taxation in the City of Lexington is strictly in accordance with the requirements of the Constitution of the United States, and that the tax assessments and levies made under this Statutes cannot be charged with contravening the Fourteenth Amendment thereof.

III.

THE ACTUAL NOTICE GIVEN TO PLAINTIFF IN ERROR MEETS EVERY REQUIREMENT OF DUE PROCESS OF LAW.

This Court has been called upon in a great number of cases to decide whether proceedings to collect taxes were contrary to the Fourteenth Amendment; and the plaintiff in error has cited a number of these decisions in support of its contention for a written notice of a hearing to be

had at a certain time and in a given place. But none of these decisions bears out that contention. In fact, every one of them decides that the especial state of facts then under examination meets the requirements of due process of law.

From this is is perfectly apparent that the Court is reluctant to interfere with the states and municipalities in the collection of their taxes.

Mr. Justice Bradley, in the case of Davidson vs. New Orleans, 96 U. S. 97, defines the Court's position in the following succinct language:

> "I think, therefore, we are entitled under the "Fourteenth Amendment not only to see that there is "some process of law, but due process of law, provided "by the state law when a citizen is deprived of his "property; and that, in judging what is due process "of law, respect must be had to the cause and object "of the taking, whether under the taxing power, "the power of eminent domain, or the power of assess- "ment for local improvement, or none of these, and if "found to be suitable or admissible in the special case "case it will be adjudged to be due process of law; but, "if found to be arbitrary, oppressive, and unjust, it "may be declared to be not due process of law."

Mr. Justice Brewer, in the case of Paulson vs. The City of Portland, 149 U. S. 30, says:

> "We do not think it essential to the validity of a "section in the charter of a city granting power to "construct sewers that there should in terms be ex- "pressed either a necessity for or the time or manner

"of notice. The city is a miniature state, the council "is its legislature, the charter is its constitution, and it "is enough, if in that the power is granted in general "terms, for, when granted, it must necessarily be exer- "cised subject to all the limitations imposed by con- "stitutional provisions, and the power to prescribe a "mode of its exercise is, except as restricted, subject "to the legislative discretion of the council. Thus in "the case of Gilmour vs. Hentig, 33 Kans. 156, it was "held that where a statute authorizes a city to provide "for the construction of sewers and drains, and to tax "the excess thereof upon the adjacent property own- "ers, but does not require that any notice shall be "given to the property owners: Held: that such "failure to require notice does not render the statute "unconstitutional or void, but notice must nevertheless "be given, and the city would have a broad discretion "with reference to the kind of notice and the manner "of giving same. * * * * As the form of notice "and the time of its publication are not affirmatively "disclosed in the complaint, it must be assumed that "there was no defect in respect to these matters. The "precise objection is that although proper and suffici- "ent notice may have been givn, it was not in terms "prescribed by the ordinance appointing the viewers. "But, as held by the Supreme Court in the case re- "ferred to (Maynard vs. Douglas County, 9 Ore. 206), "that which is implied in a statute is as much a part of "it as that which is expressed; and, where a statute or "an ordinance provides for stated meetings of boards, "designates the place at which the meetings are to be "held and directs that all persons interested in the "matter may be heard before it, it is, as said by Judge "Strahan, not a strained interpretation, but that it is

"implied thereby that some suitable notice shall be "given to the parties interested."

Mr. Justice Field, in the case of Hager vs. Reclamation District, 111 U. S. 701, said:

"Undoubtedly where life and liberty are involved, "due process requires that there be a regular course of "judicial proceeding, which imply that the party to be "affected shall have notice and an opportunity to be "heard. So also where title or possession of property "is involved; but where the taking of property is in "the enforcement of a tax,the proceeding is necessarily " less formal, and whether notice to him is at all neces- "sary may depend upon th character of the tax and the "manner in which its amount is determined. The neces- "sity for revenue for the support of the government "does not admit of the delay attendant upon the pro- "ceedings in a court of justice, and they are not re- "quired for the enforcement of taxes or assessments. "* * * * The law in prescribing the time such "complaints will be heard gives all the notice required, "and the proceeding by which the valuation is deter- "mined, though it may be followed—if the tax be not "paid-- by a sale of the delinquent property, is due pro- "cess of law."

To the same effect is Kentucky Railroad Cases, 115 U. S., 321.

Mr. Justice Woods in the case of Sturgis vs. Carter, 114 U. S. 511, says:

"The plaintiff in error contends that, besides "service of the subpeona requiring him to attend upon "the auditor and give tstimony in relation to property

"not returned for taxation, he was entitled to written "notice before the auditor could make an entry on the "tax list of any additional proprty omitted in his re- "turns. The statute does not require any notice in "writing except the compusory process of subpoena to "be served upon the person called to attend and testify. "But, if further notice was required, it was waived by "plaintiff in error. The finding of the circuit court "shows that he appeared and submitted to an examina- "tion touching the correctness of his returns, that the "auditor told him during such examination that as "auditor he was required by his duty to make a sup- "plemental assessment against him of property which "he had not included in his return for the four years "mentioned in the findings of the court, and requested "him to make such explanation of his returns as he "thought proper, and that he did make such as he "chose. It does not appear that he complained that he "had not received notice of the purpose of the auditor "to increase the assessment of his property, or that "it was too short, or that he asked further time for "considration or to take the advice of counsel, or to "produce further evidence. From all that appears by "the record there was no surprise. He had opportun- "ity to establish the correctness of the tax return, and "to show the auditor that he was not liable to an addi- "tional assessment. He cannot therefore complain of "want of notice. * * * * In substance this con- "tention is that a taxpayer who has been avoiding the "payment of the taxes due from him by making false "returns can shield himself behind the annual settle- "ments made by the auditor with the treasurer in "which his returns were assumed to be true, and that "the legislature can pass no act by which the falsity of

"of the returns can after a later period, in this case "four years, be exposed and the payment of the taxes "enforced. In other words, that the taxpayer has a "vested right as the fruits of his false returns. Such "a proposition cannot be sustained. Foster vs. Essex "Bank, 16 Mass. 245. In our opinion no right of the "taxing power was involved by the act of 1878. In- "vestments in bonds and stocks were subject to taxa- "tion. The tax upon such investmnts were due to the "state, and the act of 1878 merely provided a method "by which the taxes might be assessed and collected "in spite of the annual settlements made by the audi- "tor. It gave a new remedy to the state for enforcing " a right which it had all the time possessed, the right "to the taxes upon property liable to taxation."

We therefore assert that, under the decisions of this Court, only such notice as suits the circumstances of the case is necessary, and that no formal or prescribed notice is necessary.

ACTUAL, SPECIFIC NOTICE WAS GIVEN TO THE PLAINTIFF, and that fact has not been successfully denied or put in issue by plaintiff. The allegation of the answer filed by the City of Lexington upon this subject are as follows:

"These defendants allege that long prior to said "assessment, to-wit: more than thirty days prior to "said assessment, the defendant, the City of Lexington, "through its duly authorized officers and agents, noti- "fied the plaintiff that it had omitted from its assess- "ment for the years 1894 to 1898, inclusive, a large "portion of the estate held by it as trustee for Clara "Bell, and that said city, through its duly authorized

"officers and agents, furnished and delivered as a part "of said notice an itemized statement of the securities "and other personal property belonging to said estate "and held by the plaintiff on the respective dates for "taxation for the respective years, together with the "values of said property, and the amount thereof omit- "ted by plaintiff from its regular yearly assessment "sheet; that the payment of the taxes upon said omit- "ted property was repeatedly demanded of the plain- "tiff by the City of Lexington, through its legally ap- "pointed officers and agents, during the period of more "than thirty days next prior to said assessment, and "that plaintiff was notified long prior to said assess- "ment that unless said taxes for said omitted property "were paid, and the said property listed by plaintiff, "*the* assessment thereof would be made by M. C. "Foushee, the regular assessor of Lexington; and that "ample time and opportunity was afforded plaintiff to "show whether said property had been omitted or not "from said yearly statements." (See printed record, pp. 27-28.)

To this allegation of notice plaintiff in error made this very evasive and ineffectual reply:

"They deny that M. C. Foushee, assessor of the "City of Lexington, either himself or by deputy, ever, "prior to said assessment, made any claim against the "plaintiff as trustee for any of the back taxes alleged "to be due from it. Certain persons claiming author- "ity therefor, but not said assessor, did about that "time claim that certain taxes were due to said City, "and did present to the plaintiff a statement of said "claim, but said statement was not the same but ma-

"terially different from the items included in the "alleged assessment." (See printed record, p. 41.)

There is no denial that authorized agents of the City, or that the City of Lexington gave said notice for more than thirty days; but the denial is a specious one that neither M. C. Foushee, the assessor himself, nor by deputy, gave said notice. It is not worth while to take up the Court's time with citation of authorities upon such pleading as this. It is intended to be evasive, and was not really intended as a denial of the allegations of defendants' answer which, in fact, could not be truthfully denied.

We beg the Court to note that the City of Lexington, and not M. C. Foushee, is the defendant in this action and that the City of Lexington, and not the assessor, is the party entitled to the tax.

The allegations in the answer of the city (pages 27 and 28 of the record) show these facts: (1) that prior to the assessment notice was given on behalf of the city to the plaintiff that it had omitted from assessment for the years 1894 to 1898, a large portion of the estate held by it as Trustee of Clara D. Bell; (2) that the written statement of this claim was presented to the plaintiff; (3) that payment of these taxes was repeatedly demanded of the plaintiff before assessment was made, and payment refused; (4) plaintiff was notified that unless it listed the property the assessments would be made by M. C. Foushee, the City Assessor. The only response to these facts by the plaintiff, as shown on page 41 of the record, in which it denies that the Assessor made such

claim, but admits that such a claim was made on behalf of the city, and a written statement of it furnished to the plaintiff, which was different from the items now asserted.

On page 4 of the record, plaintiff says:

"Certain persons claiming authority therefor did "about that time claim that certain taxes were due to "said city; and did present to the plaintiff a statement "of said claim."

On page 55 it says:

"Said pretended assessments were made without any "advice or information except such partisan informa- "tion as was furnished to said assessor by the Back "Tax Assessor of said city."

The ordinance of said city (record, page 9) requires the Back Tax Assessor to ascertain if property was omitted and report the same to the assessor; and that the assessor should then assess the same.

So that the plaintiff admits, that before the assessment, it was notified that it had omitted property for these years and owed taxes, that the written claim was presented to it, payment of the taxes demanded and refused, and that it was notified that the assessor would assess it unless the property was listed. In response to this demand and notice the plaintiff did nothing, but refused to list the property or pay the taxes.

After waiting about thirty days the city assessor under authority conferred by the City Charter, proceeded to assess this omitted property, and entered the same on his books, as shown by Exhibits 1, 2 and 3, pages 30

and 31 of the record. The tax bills were duly made out, together with proper receipts, and placed in the hands of the defendant Gross, the Delinquent Tax Collector. He tendered the receipts and demanded payment of the plaintiff. This was refused. He then levied upon the real estate and had it advertised for sale.

The Court of Appeals of Kentucky, in this case, rules upon the question of notice in the following language:

"The claim of want of proper notice of the retro-
"spective assessment has already been largely disposed
"of in what we said as to the burden of proof. It was
"necessary (assuming that notice was vital) for the
"appellant to allege and, if denied, prove a want of
"notice of the retrospective assessment by the officer.
"While this would involve the proving of a negative,
"which is contrary to the general rule, yet is necess-
"ary in cases such as this under discussion. As the law
"presumes that the officers having the matter in
"charge did their duty, if notice was necessary, it will
"be presumed to have been given. Greenleaf on Evi-
"dence, section 78; Brandt vs. Hyatt, 7 Bush 363;
"Brown vs. Young, 2 B. Mon. 26. * * * * While
"appellant in this case did not show that it had not
"received notice of the re-assessment, *we think the ap-*
"*pellees established that it did have notice, although it*
"*was not necessary for them to have done so. This*
"*record shows that appellant relied upon the technical*
"*defense that the regular assessment made by the*
"*officer could not be inquired into, nor any property of*
"*its cestui que trust re-assessed, and had no intention*
"*whatever of recognizing the right of the assessor to*

"*assess any of its property as omitted.*" Printed record, pp. 113-114.)

We therefore contend that, under every phase of the matter, plaintiff had these notices:

1. The notice published in the newspaper;
2. The notice by handbills posted in public places:
3. The sittings of the assessor;
4. The actual notice to appear and give in the property which the assessor afterwards assessed as omitted property, said notice specifying the kind and character of property omitted.

IV.

A HEARING OF THE TAXPAYER'S COMPLAINT BY A COURT OF COMPETENT JURIDISTION MEETS THE REQUIREMENTS OF DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT, WHETHER THERE BE ANY OTHER NOTICE OR NOT, AND WHETHER THE TAXPAYER MAY HAVE HAD ANY OTHER HEARING OR NOT.

This, we think, is a self-evident proposition, and we claim in the case now at bar plaintiff was heard as to each and every one of his complaints by the Fayette Circuit Court, and by the Court of Appeals of Kentucky, and that said hearing was complete, and in every way met the requirements of due process of law. Under the jurisprudence of Kentucky, there can be no question but

that a court of equity can enjoin the collection of taxes. In fact, the plaintiff has invoked the jurisdiction of these courts in this action. In the case of Baldwin vs. Shine, 84 Ky. 5502, the court says:

"In many of the states equity will not enjoin even "the collection of an illegal tax, and much less an as- "sessment, because the assessor is regarded as a "quasi-judicial officer. It is said that public policy, "which will not brook delay in the public business, "requires this rule. It seems to us that the evils flow- "ing from its enforcement overbalance this considera- "tion. It is an object of equity to foresee and prevent "wrong. One of its principal offices is to avoid multi- "plicity of suits and circuity of action. By this rule "the taxpayer is left to sue the collecting officer. This "is unjust to both. It produces extensive litigation "between two innocent parties, one of them being in- "volved in it by reason of an honest effort in an official "duty. The courts of Illionis, Indiana, Pennsylvania, "and some other of the states, including this one, have "discarded this rule, and hold that a court of equity "may enjoin the collection of an illegal tax. This being "so, why is it not equally proper, in view of the aims "of equity, to extend the rule to a proposed illegal as- "sessment, official in its character as this one would be? "It is illegal to say that the chancellor can control "the consequences but not the act productive of them, "that he cannot arrest the act; but may lay his hands "upon those who attempt to carry it into necessary "result."'

In the case of Gates vs. Barrett, etc., 79 Ky. 295, the court says:

"The right to have injunction to restrain the col-
"lection of an illegal tax has been so long recognized
"and acted upon in this state that it is unnecessary to
"stop to inquire upon what grounds that jurisdiction
"is exercised by courts of equity."

To the same effect: Allison, etc., vs. Louisville, Harrods Creek and West port Ry. Co., 9 Bush 249; Louisville & Nashville R. R. Co. vs. Warren County Court 5 Bush 243

The most recent case in Kentucky upon this point is City of Louisville vs. Board of Trade, 90 Ky. 409. The court in rendering its opinion uses the following language:

"But a party seeking relief by injunction must make
"out a clear case of equitable interposition. The burden
"is upon him. Here the petition shows that at least a
"portion of the property was liable for taxes, and it
"shows that something is due. This being so, it was
"the duty of the party asking relief to definitely point
"out the extent to which he was entitled to be relieved.
"If he seeks equity he must do equity. He must show
"his willingness to pay what he is fact owes, or at
"least, in a case like this, he must show to the court
"how much he in fact does not owe. *He must, in as*
"much as injunction is peculiarly an equitable remedy,
"separate the just from the unjust portion of the claim
"and ask relief only as to the latter."

From these decisions it is apparent that in Kentucky a court of equity has the power in an injunction suit to restrain the collection or assessment of taxes, to correct the assessment, and give judgment to the party

entitled thereto for the exact amount of taxes justly due. This Court in a number of cases has clearly recognized the right to review tax questions by injunction.

The Kentucky cases cited by plaintiff in error in which the courts refuse to interfere, when boards of equalization have fixed values, has nothing to do with this case, first because the justice and reasons for the rule are apparent, and second because in the case at bar a full hearing, as to the amount of omitted property and its value was granted by the Kentucky Courts; and that meets all the requirements of due process of law.

Mr. Justice Field in the case of Stanley vs. Board of Supervisors, 121 U. S. 535, disposes of this question as follows:

> "When the overvaluation of property has arisen "from the adoption of a rule of appraisement which "conflicts with a constitutional or statutory direction "and operates unequally, not merely on a single in- "dividual but on a large class of individuals or corpo- "rations, a party aggrieved may resort to a court of "equity to restrain the exaction of the excess upon "payment on tender of what is admitted to be due. * "* * * The plaintiff below did not think proper to "resort to this method of obtaining relief, which would "have given him all he was entitled to, if, in fact, his "shares were assessed at the greater rate "than was assessed on other moneyed capi- "tal, because of their illegal over-valuation. "* * * * * * * If the assignors of the plain- "tiff had any just grounds of complaint to the assess- "ment as excessive, they should have pursued the "course provided by statute for its correction, or re-

"sorted to equity to enjoin the collection of the illegal "excess upon payment or tender of the amount due "upon what they said to be a just valuation. It follows "that the judgment of the court below must be affirmed "and it is so ordered."'

In the Kentucky Railroad Case, 115 U. S. 321, Mr. Justice Matthews says:

"The judgments now under review were rendered "in just such actions, so that we cannot escape the "conclusion that there is no ground for the plaintiffs "in error to contend that they had been rendered with- "out due process of law."

The judgments to which the learned justice referred were injunction suits brought by three railroad companies against the Commonwealth of Kentucky to enjoin the collection of taxes, in which the rights of the parties were reviewed, and the tax upheld.

Mr. Justice Miller, in the case of McMillan vs. Anderson, 95 U. S. 37, makes this statement:

"Nor is the person charged with such a tax with- "out legal remedy by the laws of Louisiana. It is "probable that in that state, as in others, if compelled "to pay the taxes by a levy upon his property, he can "sue the proper party and recover the money as paid "under duress, if the tax was illegal. But, however "that may be, it is quite certain that he can, if he is "wrongfully taxed, stay the proceeding for its collec- "tion by process of injunction. The act of 1874 recog- "nizes this right to an injunction and regulates the "proceedings when issued to stay the collection of "taxes. It declares that they shall be treated by the

"courts as preferred cases, and imposes a double tax "upon a dissolution of the injunction. But it is said "that this is not due course of law, because the judge "granting the injunction is required to take security "from the applicant, and that no remedial process can "be within the meaning of the Constitution which re- "quires such a bond as a condition precedent to its "issue. It can hardly be necessary to answer an argu- "ment which excludes from the definition of due pro- "cess of law all that numerous class of remedies in "which, by the rules of the court or by legislative pro- "vision, a party invoking the powers of a court of jus- "tice is required to give that security which is neces- "sary to prevent its process from being used to work "gross injustice to another."

In the case of Hager vs. Reclamation District, 111 U. S. 701, Mr. Justice Field, after reciting the provisions of the California law, requiring the collection of taxes levied by suit, concludes with this statement:

"In them he may set forth by way of defense all "his grievances. If property taken upon an assess- "ment, which can only be enforced in this way, be not "taken by due process of law, then, as said by Mr. Jus- "tice Miller in the New Orleans case, these words as "used in the Constitution can have no definite mean- "ing. The numerous decisions cited by counsel, some "of which are given in the note, as to the necessity of "notice and of an opportunity of being heard *are all "satisfied when a hearing in court is thus allowed.*"

Even if there had been no notice provided by statute, nor actual notice given, we affirm that in this action the appellant has had such a complete hearing of all of its

defenses that the inhibitions of the Fourteenth Amendment could not be invoked.

If we strip the contention of plaintiff in error of all of its technicalities, and get down to its real complaint, it is that it did not have proper notice, and did not have an opportunity to be heard as to the amount and value of its property subject to taxation. Plaintiff's petition (see printed record, pp. 1-8, inclusive) presents all these questions. It contends in its petition that it had given in its property, and had omitted no property, but fails to specify even then a list of the property which it held subject to taxation; though it does specify in its reply certain of its property which it alleges was not subject to taxation under the law of Kentucky. On all of these points the City of Lexington joined issue by answer and counterclaim (see record, pp. 20-29), and in this pleading defendants in error set out the items of omitted property, the value of each item, and alleged that the property is subject to taxation. To this plaintiff in error filed a reply, (see printed record, pp. 39-41), in which it joined issue upon some of the allegations of the answer and counterclaim of defendants.

Every single issue that could have been tried out before the assessor, or before the Board of Equalization, has been actually and fully heard.

Suppose the assessor had required the plaintiff in error to appear at a precise time and place, and show cause against this assessment, and suppose it had so appeared? What answer could it have given? Certainly no more than it made in this suit. If upon hearing the assessor

had held the same property liable for taxes as the Circuit Court did, could the plaintiff in error have complained that there had not been due process of law? If the court actually did what the assessor might have done, how is the plaintiff in error injured?

For authority the Kentucky Court of Appeals says in the case of Clark vs. Louisville Water Co., 90 Ky. 524:

> "The appellee by this suit came into Court and "asked equitable relief by injunction, or the exercise "of an extraordinary remedy. Asking equity, it may "well be required first to do equity, and being in Court "and liable for the tax and the chancellor being in pos- "session of the case, while its property in use in its "business cannot be seized, it should have been re- "quired to pay the taxes into Court."

The Fayette Circuit Court took general jurisdiction of the matters involved, and, after hearing both sides, rendered a judgment enjoining the City of Lexington from collecting all of the taxes it claimed for omitted property, but rendered a judgment for a part of the property claimed to have been omitted; and the extent to which plaintiff obtained relief in this proceeding is shown by the following table:

The city assessor assessed as omitted property for the year

1894	$217,762
1895	211,104
1896	226,8334
1897	238,925
1898	214,582

(See Exhibit No. 4, printed record, p. 32.)

On this the Fayette Circuit Court granted judgment in favor of the city for these years as follows:

1894	$123,799
1895	116,176
1896	136,057
1897	134,996
1898	176,716

Thus on the first three years it reduced the assessment more than $90,000 per year: for 1897 it reduced the assessment $104,000, and for 1898 it reduced the assessment $38,000. (See printed record, p. 102). The court heard proof upon the amount and values of the property omitted, and upon the other issues raised by plaintiff. (See printed record, pp. 42-96, inclusive), and then rendered judgment against plaintiff in a fixed sum for taxes due, and further adjudged a lien upon certain real estate which the court ordered sold. This judgment was rendered in this injunction proceeding under the general equity jurisdiction in such proceedings in Kentucky. (See printed record, pp. 98-103, inclusive.) From that judgment plaintiff prayed an appeal to the Court of Appeals of Kentucky, which was granted. (See printed record, p. 103). There the case was tried over upon the record taken up from the circuit court, and the judgment of the circuit court affirmed. (For opinion of Court of Appeals of Kentucky see printed record, pp. 110-116, inclusive.) The opinion of the Court of Appeals of Kentucky, delivered by Judge Barker, disposed of each and every one of

the contentions of the appellant and plaintiff in the court below. We beg the Court to read with care this able opinion, and call the Court's attention especially to the following part thereof:

"The claim of appellant to escape a retrospective "assessment of the property of its cestui que trust in "this case is wholly technical. That it owes the tax it "seeks to evade is made apparent by an examination of "this record. Although it had in its hands the means of "instantly and most conclusively showing either that "the trust estate did not own the property with which "it was assessed, or that the values were too high, *it "introduced no evidence whatever on this subject.* "While it was not incumbent upon the appellees to in- "troduce any evidence, being authorized under the "principles herein enunciated to await the evidence of "appellant showing the invalidity of the assessment "complained of, yet they did introduce evidence which "we think clearly establishes that appellant justly "owes the amount of the tax which has been adjudged "against the estate of its cestui que trust.

"Equity does not favor mere technical defenses "to the collection of tax claims. Taxes are the very "life blood of the government; the duty of paying a "ratable share of this public burden is incumbent on "every property-holder. Whatever just part of this "common burden is shirked by him whose duty it is to "bear it, is necessarily cast as an additional burden "upon other shoulders; and, therefore, while under the "law one may sometimes be permitted to interpose "mere irregularities as a defense to the imposition of "taxes, when he asks the aid of the extraordinary "power of the chancellor, he should show, as a condi-

"tion precedent to receiving it, that he has a meritor-
"ious defense to the tax claim he assails. * The rule
"then is, when one comes into equity asking for relief
"against taxation, it is incumbent upon him to show
"clearly that he has paid or is willing to pay all that
"he justly owes toward the public burden; he must
"make a full, fair and complete disclosure of the
"property he has subject to taxation, so that the court
"may judge as to whether or not he is unjustly taxed;
"he must come, not only with clean, but with open
"hands.'" (See printed record, pp. 115-116.)

We respectfully submit that, for all these reasons, separately and collectively, the judgment of the Court of Appeals of Kentucky in this case should be affirmed.

J. R. MORTON,
E. P. FARRELL,
GEO. C. WEBB,
GEO. S. SHANKLIN,
Attorneys for Defendants in Error.

AUTHORITIES CITED.

Central Land Co. vs. Laidley, 159 U. S. 103.
Kentucky Code, section 126.
Pomeroy on Code Remedies, 623.
Reynolds Auditor et at vs. Bowen, 36 N. E. Rep. 756
Clark vs. Louisville Water Works, 90 Ky., 524.
Ky. Statutes, section 3179, see Appendix A.
Davidson vs. New Orleans, 96 U. S. 97
Hagar vs. Reclamation District, 111 U. S. 701
Kentucky Railroad Tax Cases, 115 U. S. 321.
Cooley on Taxation, 3rd Ed. Vol. I., pp 61 and 65
Weyerhauerer vs. Minnesota, 176, U. S., 550
Paulson vs. The City of Portland, 149, U. S., 30
Sturgis vs. Carter, 114 U. S. 511
Foster vs. Essex Bank, 16 Mass. 245
Greenleaf on Evidence, section 78.
Brandt vs. Hyatt, 7 Bush, 363.
Brown vs Young, 2 B. Mon. 26.
Baldwin vs. Shine, 84 Ky. 502.
Gates vs. Barrett, &c., 79 Ky., 295
Stanley vs. Board of Supervisors, 121 U. S., 535
McMillan vs. Anderson, 95, U. S., 37.

APPENDIX A.

Revenue and Taxation.

Section 3179. *Assessor to give notice---oath---office hours---blanks---failure to give list---penalty---other duties.* On or before the first day of September in each year the assessor shall give public notice, by advertisment in the official newspaper of the city and by handbills posted through the city, that all persons owning or having in their possession or under their control as agent, guardian, committee, executor, administrator, curator, trustee, receiver, commissioner or otherwise, tangible or intangible personal property on the fifteenth day of September following, are required, on or before the first day of October, to give him a true and complete list of the same, with true cash value thereof, as of the fifteenth day of September, under oath, upon forms to be furnished on application by said assessor at his office, and that all merchants in the city, doing business for themselves or others, shall, in like manner, in addition thereto, state the highest amount in value of all goods, wares, merchandise owned or kept on hand for sale by said merchants during the three months next preceding such fifteenth day of September. The assessor and his deputies shall be authorized to administer oaths and affirmations, and may examine on oath any person touching his personal property, and the value thereof, and may examine merchants on oath as to the statements they are required to make. The assessor shall keep his

office open, and be himself or have a deputy in attendance during the hours from 8 a. m. to 6 p. m., or such other or additional hours as may by ordinance be fixed, from the fifteenth day of September to and including the first day of October, excepting Sundays and legal holidays. The assessor shall constantly keep on hand, and furnish to persons lawfully requiring the same, all necessary blanks and forms for the lists and statements required by this act. Nothing herein shall, however, prevent the assessor from assessing from the best information he can gather; and where an assessment has been made against a person who has had actual notice to appear and list his property or make statements thereof and fails to do so, the same shall not be decreased, but may be increased by the board of equalization. If any person refuse to attend when summoned, or to be sworn to answer, or to answer any question propounded to him by the assessor or his deputy, the assessor or deputy may, in writing, under oath, state the question, the refusal to answer it, and ask the police judge to issue a warrant against such person; and if the question appear to be a proper one, the said judge shall issue a warrant, and said person shall, on conviction of having refused to answer the question, it being found by the court to be a proper one, be fined ten dollars, and there compelled by process to answer the question and such proper questions as the assessor may propound to him. The assessor shall assess personal property in a separate book in which he shall separate tangible from intangible property. The word person as used herein shall mean natural and arti-

ficial persons, and the duties enjoined on them shall, in the case of artificial persons, be performed by the chief officer or agent in the city at the time. Whenever the assessor shall ascertain that there has, in any former year or years, been any property omitted which should have been taxed, he shall assess the same against the person who should have been assessed with it, if living, if not, against his representatives.

FILE COPY.

Office Supreme Court, U.
FILED.
OCT 26 1906
JAMES H. McKENNE
CLE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 55.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KY., TRUSTEE OF CLARA D. BELL, PLAINTIFF IN ERROR,

vs.

THE CITY OF LEXINGTON AND E. T. GROSS, DELINQUENT TAX COLLECTOR OF SAID CITY, DEFENDANTS IN ERROR.

SUPPLEMENTAL BRIEF FOR DEFENDANTS IN ERROR.

GEO. C. WEBB,
GEO. S. SHANKLIN,
Attorneys for Defendants in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 23598

(19,812.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 55.

THE SECURITY TRUST AND SAFETY VAULT COMPANY OF LEXINGTON, KENTUCKY, TRUSTEE OF CLARA D. BELL, PLAINTIFF IN ERROR,

vs.

THE CITY OF LEXINGTON AND E. T. GROSS, DELINQUENT TAX COLLECTOR OF SAID CITY, DEFENDANTS IN ERROR.

SUPPLEMENTAL BRIEF FOR THE DEFENDANTS IN ERROR.

By leave of court we submit the following statements which were omitted from our original brief:

Although Actual Notice Was Given, No Notice is Required Prior to the Assessment of Omitted Property.

In the oral argument considerable stress was laid upon the fact that no notice was provided by the statute. In the case of Weyerhaueser *vs.* Minnesota, 176 U. S., 550-551, there is copied the statute of Minnesota providing for the assessment of undervalued property.

This statute, as the court will see, made no provision whatever for notice.

On page 553 of this case this agreed statement was made:

> "That no notice of any proceedings by any of said persons in making said re-assessment or re-valuation of said lands or in extending said taxes against said land was ever given by publication or otherwise to these defendants."

So in that case there was no notice whatever, either by statute or otherwise, given before the assessment was made.

The court said:

> "This procedure was exactly followed."

The court then held that the proceedings up to the time of the assessment were not judicial, and that the plaintiff in error was not entitled to notice.

The court then said that the provision that within twenty days after the list was published the person might question the assessment, was all that was necessary to satisfy due process of law. The plaintiff in this case had four weeks to apply to the board of equalization for relief, as hereafter shown.

In applying even that remedy, the court said:

> "And certainly, in justice or reason, a party cannot complain that when he objects to a tax on the ground of some omission or irregularity in matters of form, he is required to show that he was prejudiced."

The court, after deciding the State had the right to fix the different methods of legislation, says, in Stanley *vs.* Supervisors of Albany (121 U. S., 535):

> "We hold that against an excessive valuation of property its owner had a remedy in equity to prevent the collection of the illegal excess."

And further said that a gross undervaluation was within the same principle as omitted property.

Under the Weyerhaueser case, we submit there was due process of law in this proceeding.

Direct Issue Made as to Opportunity to be Heard.

The statement was made by counsel that the allegation that plaintiff had not had opportunity for hearing was not denied. This is incorrect, for on page 28 of the record, near the middle of the paragraph, defendants distinctly alleged *"that ample time and opportunity was afforded plaintiff to show whether said property had been omitted or not from said yearly assessments."* So the issue upon this point was sharply made, and no proof offered by the plaintiff in support of its side.

Questions upon Which the Findings of the State Court are Conclusive.

That all question as to the form of the proceeding is conclusively settled by the State court is sustained in Palmer *vs.* McMahon (133 U. S., 665), where the court, by the Chief Justice, said:

> "We are bound by the decision of the Court of Appeals of the State of New York adversely to the plaintiff in error as to the failure to comply with the statute in relation to the method of procedure, form of assessment, oath of assessors," etc.

That the finding of the State court as a fact that notice had been given is conclusive upon this court is sustained by the statement in the case of Stanley *vs.* Supervisors of Albany (121 U. S., 547), where the court said:

> "Where a case is tried by the court without a jury, its findings upon questions of fact are conclusive here, it matters not how convincing the argument that upon the evidence the finding should have been different."

An Actual Hearing as to Values Was Had in this Suit.

The Fayette circuit court did in this case pass upon the question of values of the omitted property.

Issue as to values was tendered by defendants (Record, pp. 22 and 23). Plaintiff denied values (Record, pp. 39 and 40). The court heard proof on values. (See deposition of Vaughn, Record, pp. 73 to 79.)

The court determined values from the evidence before it. (See last paragraph of p. 98 and pp. 99 to 102 of Record.)

This finding was approved and affirmed by Kentucky Court of Appeals.

That was certainly due process of law, even on the contention as to values.

Opportunity for Hearing by the Board of Equalization and Complete Relief is Given by Section 3181 of the Statute.

Under the constitution of Kentucky, the city of Lexington is a city of the second class, and the entire charter and organic law for the city of Lexington is contained in the General Statutes of Kentucky. Sections 3174 to 3189 embrace all of the sections which relate to revenue and taxation. Of these sections, sections 3179 to 3182, inclusive, embrace the whole law as to assessments and the review of assessments by the board of equalization. A copy of these sections is filed with this brief as Appendix B. Section 3179 prescribes the kind of notice and method of original assessment, and also as a part of it embraces the assessment of omitted property. This is all contained in one section, as a part of one enactment, and forms an entity in the statute, and cannot be separated into two separate statutes, as has been attempted in the oral argument in this case.

The assessment of omitted property, therefore, has all of the safeguards as to notice and opportunity to be heard

given by this statute in case of original assessment, and section 3181, providing for a board of equalization, is a part of the scheme of taxation as to omitted property.

Section 3181 provides for a board of equalization, to consist of three citizens, who shall be selected by the mayor, with the consent of the general council, and we call especial attention to the following portions of that section:

> "Such board shall be paid such compensation as may by ordinance be fixed, and shall meet at a suitable place to be provided by the city *on the first Monday in January of each year.* * * * The assessor shall be in constant attendance on said board and shall furnish them all information he can. They shall have power to cause all city records to be brought to them for their inspection by the custodian thereof, and if it be necessary to retain them for defense, may do so by receipting therefor to the custodian thereof. * * * *They shall hear all complaints against the assessment made by the assessor, and shall determine the same.* They shall increase or decrease assessments on like property to make all assessments as uniform as may be; are to place a true value on the property assessed; but no increase shall be made without notice to the person whose property is to be increased. * * * Said board shall remain in session as long as the business may require, but not to exceed four weeks" (Appendix B).

The powers of this board are ample for all purposes of review, and the taxpayer has the right to be fully heard as to any complaints he may have to make as to the method and manner of assessment, and for a full and complete hearing as to values fixed in the assessment, which values they may increase or decrease, as may be found necessary to conform to the requirement of this statute for the true cash value of the property assessed.

The assessment complained of by plaintiff in error was made on December 31, 1898. The board of equalization met on the following Monday, and continued in session for four

weeks. On December 31 the back-tax collector levied his writ, and took no further steps. On the 3d of February following plaintiff in error brought this suit and enjoined the collection of the tax.

Although plaintiff had the right to a review of the assessment before the board of equalization during four weeks in January, 1899, it made no application to that board, and after the board had adjourned, on the 3d of February resorted to injunction. Plaintiff had the option to either go before the board of equalization and make its complaint or to make it in this injunction proceeding. Both methods were provided by the Kentucky law. Its reason for electing to enjoin is apparent from the facts disclosed in this suit. It was conscious of having withheld from the city a large part of its property, which was unquestionably subject to taxation, and further knew that on the merits they could make no showing which would enable them to escape with their unlawful gains.

The claim made by plaintiff that it was precluded from having the assessment reviewed by reason of the levy is absolutely untenable. Plaintiff has insisted throughout this case that an assessment was absolutely indispensable as the basis for any tax. Had it appealed to the board of equalization and the board had sustained their contention that they were not liable for assessment for omitted property, the assessment would have been destroyed and the levy rendered a nullity.

That the plaintiff in error had a right to a hearing before the board of equalization is conceded by it in its original brief (pages 21-22) in the following statement:

> "We have not thought it incumbent on us to determine the question which may be made on this statute, whether the provision just quoted was intended to stand alone as to the assessment of omitted property; or whether it was intended that the action of the assessor should go through the same forms and be subjected to the same processes to ascertain its just-

> ness and correctness, including the board of review and other provisions to secure a proper result, as is provided in the case of original assessments. If we should pass an opinion on that point, we should be disposed to say that the statute intends that the act of the assessor in assessing property omitted for former years should be subjected to the same scrutiny, and should go through the same forms as is provided in the case of original assessments."

It is directly charged in the answer that the plaintiff had full opportunity for hearing, and the above statute supplies one of the opportunities referred to. The fact that the plaintiff in error did not apply to the board under this method makes no difference, as decided in the case of Stanley *vs.* Board of Supervisors (121 U. S., 535), where the court says:

> "Plaintiff below did not think proper to resort to this method of obtaining relief, which would have given him all he was entitled to." * * *

The plaintiff in error seeks to avoid the effect of its failure to apply to the board for the relief by citing section 4189 of the Kentucky statutes. This position cannot be sustained for these reasons:

1st. Section 4189 is not part of the charter, but is part of the provision for attachment by the sheriff to collect State and county taxes.

2d. Section 3188 in the charter only adds the right to collect by attachment to the right to enforce the lien by suit, and to distrain by the tax collector, the methods of collection which are expressly provided in the charter. It in nowise superseded the methods and means provided in the charter for collecting taxes.

3d. Under section 4189 the only defense excluded is that of defective assessment. It expressly permits the taxpayer to show that the property has never been assessed. This is the exact defense offered by plaintiff in this suit, the sole basis of its claim.

Section 4189, so far from affecting the right of hearing before the board of equalization, provided for an additional hearing before a court of law.

Surely the right to a hearing before such board, the right to be heard before the court in an attachment suit, and the right to relief by injunction are sufficient to constitute due process of law.

As stated in Davidson *vs.* New Orleans (96 U. S., 105), there appears to be a strange misconception of the scope of the provision as found in the fourteenth amendment, and it would seem from many of the cases and the arguments made in them that the clause under consideration is looked upon as a means of bringing to the test of the decisions of this court the abstract opinions of every unsuccessful litigant in a State court of justice of the decision against him and of the merits of the legislation on which such a decision may be founded.

And the court holds in that case:

> "It is not possible to hold that a party has without due process of law been deprived of his property, when, as regards the issues affecting it, he has by the laws of the State a fair trial in a court of justice, according to the modes of procedure applicable to such case."

Without regard to the notice given in this case, if, as held in the Weyerhauser case, no notice by statute or otherwise is necessary before assessment; and if, as held in other cases, a hearing, either before a board of review or court of justice, after assessment is sufficient, what escape can there be from the conclusion that there has been due process of law?

Respectfully submitted,

GEORGE C. WEBB,
GEORGE S. SHANKLIN,
Attorneys for Defendants in Error.

APPENDIX B.

SECTION 3179. *"Assessor to Give Notice—Oath—Office Hours—Blanks—Failure to Give List—Penalty—Other Duties.*—On or before the first day of September in each year the assessor shall give public notice, by advertisement in the official newspaper of the city and by handbills posted through the city, that all persons owning or having in their possession or under their control as agent, guardian, committee, executor, administrator, curator, trustee, receiver, commissioner or otherwise, tangible or intangible personal property on the fifteenth day of September following, are required, on or before the first day of October, to give him a true and complete list of the same, with true cash value thereof, as of the fifteenth day of September, under oath, upon forms to be furnished on application by said assessor at his office, and that all merchants in the city, doing business for themselves or others, shall, in like manner, in addition thereto, state the highest amount in value of all goods, wares, merchandise owned or kept on hand for sale by said merchants during the three months next preceding such fifteenth day of September. The assessor and his deputies shall be authorized to administer oaths and affirmations, and may examine, on oath any person touching his personal property, and the value thereof, and may examine merchants on oath as to the statements they are required to make. The assessor shall keep his office open, and be himself or have a deputy in attendance during the hours from eight a. m. to six p. m., or such other or additional hours as may by ordinance be fixed, from the fifteenth day of September to and including the first day of October, excepting Sundays and legal holidays. The assessor shall constantly keep on hand, and furnish to persons lawfully requiring the same, all necessary blanks and forms for the lists and statements required by this act. Nothing herein shall, however, prevent the assessor from assessing from the best information he can gather; and where an assessment has been made against a person who has had actual notice to appear and list his property or make statements thereof and fails to to do so, the same shall not be decreased, but may be increased by the board of equalization. If any person refuse to attend when summoned, or to be sworn to answer, or to

answer any question propounded to him by the assessor or his deputy, the assessor or deputy may, in writing, under oath, state the question, the refusal to answer it, and ask the police judge to issue a warrant against such person; and if the question appear to be a proper one, the said judge shall issue a warrant, and the said person shall, on conviction of having refused to answer the question, it being found by the court to be a proper one, be fined ten dollars, and there compelled by process of contempt to answer the question and such proper questions as the assessor may propound to him. The assessor shall assess personal property in a separate book, in which he shall separate tangible from intangible property. The word person as used herein shall mean natural and artificial persons, and the duties enjoined on them shall in the case of artificial persons, be performed by the chief officer or agent in the city at the time. Whenever the assessor shall ascertain that there has, in any former year or years been any property omitted which should have been taxed, he shall assess the same against the person who should have been assessed with it, if living, if not, against his representative."

SECTION 3180. *"Assessment Books to be Returned to Auditor.*—On or before the first of December in each year the assessor shall return to the auditor his assessment books, certified by him to be a full, careful and honest assessment of all property within the corporate limits of the city subject to assessment; and he shall take the auditor's receipt therefor in duplicate, one of which he shall transmit to each board of the general council at its first regular meeting in December. All said books and said reports shall remain in the auditor's office, subject to the inspection of the public, until they shall be transmitted to the board of equalization as hereinafter provided."

SECTION 3181. *"Board of Equalization—Qualifications—Compensation—Chairman and Clerk—General Powers and Duties.*—There shall be a board of equalization, to consist of three citizens, who shall be selected by the mayor with the consent of the general council. No person shall be selected as a member of said board who shall not at the time be a housekeeper and owner of real estate of the city, and shall not have been a resident thereof for five years next preceding his election. Said board shall be paid such compensation as may, by ordinance, be fixed, and shall meet at a suitable place

to be provided by the city, on the first Monday in January of each year. They shall first be duly sworn to faithfully discharge their duties, shall elect from among themselves a chairman and a clerk, and shall then notify the auditor that they are ready to receive the assessment books, etc., which the auditor shall deliver to them, taking his receipt therefor. The assessor shall be in constant attendance on said board, and shall furnish them all information he can. They shall have power to cause all city records to be brought to them for their inspection by the custodian thereof, and if it be necessary to retain them for defense, may do so by receipting therefor to the custodian thereof. They may also interrogate any city official, who shall at their request attend them and respond to all questions. They shall have power to administer oaths, and they shall have power to compel the attendance of witnesses; and all persons who shall refuse to attend them or to be sworn by them, or refuse to answer any question, shall be subject to the same penalties as provided for like refusal to the assessor. They shall first compare his real estate book with the plat books in the auditor's office, and see that every parcel of real estate in the city has been assessed, and if they find that any has been omitted, shall certify the same, giving the number of parcels omitted to the city solicitor, who shall enforce the penalty provided in section three thousand one hundred and seventy-seven against the assessor for so doing, and they shall assess the parcels omitted. They shall hear all complaints against the assessment made by the assessor, and shall determine the same. They shall increase or decrease assessments on like property, to make all assessments as uniform as may be, or to place a true value on the property assessed; but no increase shall be made without notice to the person whose property is to be increased, and they may, in the assessment of real estate, increase or decrease all assessments uniformly by adding or subtracting a percentage of the assessments, and a notice of such increase need not be given except by publication in the official paper of the city. Said board shall remain in session as long as the business may require, but not to exceed four weeks. Three members shall constitute a quorum, and a majority of a quorum may determine any question before it. No change in any assessment shall be made by erasure, but there shall be appropriate columns for all changes and additions, and same shall be made in a different colored ink

to that which the assessor has used. When said board shall have completed its labors, it shall prepare a statement of the gross assessment of real property and the gross assessment of personal property, and the sum thereof, and also showing the increase or decrease, if any, in the total assessment made by them, under their signatures, which they shall return to the auditor with all the assessment books, plats and papers received from him, taking his receipt for the same, which they shall transmit to the board of councilmen."

SECTION 3182. "*Auditor to Verify Assessment Books—Proceeding if Mistake Found.*—The auditor shall carefully verify the statement of the board of equalization, and the assessment books returned, and if it be correct, he shall certify the same. If, however, he finds a mistake, he shall cause said equalization board to meet, and together they shall ascertain the correct amount, and the certificate of the board, indorsed by the auditor as correct, shall by him, at the first meeting in March in each year, be transmitted to the board of councilmen as a basis on which they shall predicate the annual levy ordinance."

Supreme Court of the United States.

No. 55.—October Term, 1906.

The Security Trust and Safety Vault Company, of Lexington, Kentucky, Trustee of Clara D. Bell, Plaintiff in Error, vs. The City of Lexington, Kentucky, and E. T. Gross, Delinquent Tax Collector for said city, Defendants in Error.	In error to the Court of Appeals of the State of Kentucky.

[December 3, 1906.]

The plaintiff in error, which was plaintiff below, filed its petition in the Fayette County Circuit Court, State of Kentucky, in equity, on February 3, 1899, for the purpose of obtaining an injunction restraining the defendants in error from the collection of certain back taxes accruing during the years 1894 to 1898, both inclusive, imposed in favor of the city of Lexington, and which the plaintiff asserted were illegally assessed. A temporary injunction was prayed for and granted, restraining the collection of the tax, and upon the trial the amount of the taxes was reduced, and, as so reduced, declared to be a lien on the property of the plaintiff in error as trustee, and judgment accordingly was entered, which judgment was, upon appeal to the Court of Appeals of the State, affirmed, and the plaintiff brings the case here by writ of error.

In the amended petition it is averred that the plaintiff, as trustee, owned certain real estate in the city of Lexington, and that the tax collector of the city, asserting a claim for back taxes from 1894 to 1898, both inclusive, in favor of the city against the trust estate in the plaintiff's hands for $13,964.96, had, to satisfy the claim, levied on the real property held by it as trustee and described in the petition, and had advertised the same to be sold, and would sell the same, unless restrained by order of the court. It was averred that the claim for back taxes was for alleged omissions of personal property owned by the plaintiff as trustee, which had not been assessed for city taxation for the years stated, and that the tax was based on alleged assessments imposed in December, 1898, for these years, made by the city assessor of Lexington. The plaintiff denied that the pretended assessments made in 1898 for those years were any assessments at all, and alleged that there had been no assessment for the back taxes of those years or for any of them. It was averred that certain entries which had been made in the assessor's books, for the years mentioned, purporting to

assess the property for these back taxes, were interpolated among the assessments for those years, but were not legally made, that such entries were not assessments, nor any step in the valid assessment of back taxes in those years, and were made by the city assessor without any notice to, or conference with, the plaintiff of his intention to make the same, or any assessment, and the plaintiff at no time, either before or since said pretended assessment, had been given or allowed any opportunity or privilege to make any complaint or show cause against the assessment before any competent officer or tribunal whatever. It was also averred that all of the property of plaintiff as trustee, during each of the years covered by the claim for back taxes, had been duly assessed, and if it had been given the opportunity plaintiff would have established the fact of such assessment and that it had been fully and legally paid.

The plaintiff averred that collection of taxes based on assessments made as above stated would be in violation of the Constitution of the United States and of the State of Kentucky, forbidding that a citizen should be deprived of his property without due process of law.

The defendants in their answer averred that all of the property (with an exception not material) on which the defendants were claiming taxes as upon omitted property, had in fact been omitted by the plaintiff from its assessment lists during the years mentioned, and that the lists made out by the plaintiff for those years had been imperfect and improper lists, and that there was omitted therefrom a large part of the personalty owned by the plaintiff as trustee. The defendants averred that all the omitted property was properly assessable for the respective years, and that there was due thereon, in 1898, as the back taxes on the said omitted property, the sum named, to wit, $13,964.96; and the defendants denied that the valuation of the property, as fixed in the assessment, was any larger in proportion than the value of the assessment generally placed on similar property in the city of Lexington. After the assessment was made, it was averred, that the delinquent tax collector demanded payment of the same, which was refused, and thereupon he levied upon the property on the 31st of December, 1898. The answer then set up the making of the assessment on the property omitted, and showed that it was made substantially as averred in the amended petition, by inserting in each of the books for the various years an additional assessment on account of omitted property, and that after each of the entries of assessment in the various books had been made by the assessor he signed his name after the words, "Assessed by me;" and it is averred that the assessment was also recorded by the assessor in the back tax assessment book, kept by the city of Lexington, and was by him reported to the auditor of the city of Lexington on the day that the assessment was made, December 31, 1898. The defendants also averred that, more than thirty days prior to the time the assessment was made, the

city, through its duly authorized officers and agents, had notified the plaintiff that it had omitted from its assessments for the years 1894 to 1898, both inclusive, a large portion of the estate held by it as trustee, and, at the time of giving such notice, the officers of the city had furnished and delivered, as a part of such notice, an itemized statement of the securities and other personal property belonging to the estate, and held by the plaintiff, on the respective dates, for taxation for the respective years, and that payment of the taxes upon this omitted property was repeatedly demanded of the plaintiff by the city during a period of more than thirty days prior to the assessment, and the plaintiff refused to pay any additional taxes or to list the omitted property, and that ample time and opportunity were afforded plaintiff to show that the property had not been omitted from the yearly assessments, and the plaintiff failed to do so.

A reply and rejoinder were filed, and upon the pleadings the parties went to trial.

Judgment was given for the defendant, refusing the injunction, and providing for the sale of the real estate to satisfy the amount due for back taxes, as stated in the judgment. The total amount of back taxes due on the omitted property was, by such judgment, reduced from $13,964.96, the amount claimed by the defendant, to the sum of $8,626.63.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

There are in the State of Kentucky two distinct methods by which an assessment for so-called back taxes can be made. One method is an assessment by a special back tax assessor, elected as provided for by an ordinance of the city of Lexington. This ordinance the Court of Appeals of the State of Kentucky has held, contrary to the contention of the plaintiff in this case, did not displace the regular assessor, or affect his right to make an assessment for back taxes. The other method provides for an assessment by the regular assessor, under section 3179 of the laws relating to the city of Lexington, which section, among other things therein contained, provides that: "Whenever the assessor shall ascertain that there has, in any former year or years, been any property omitted which should have been taxed, he shall assess the same against the person who should have been assessed with it, if living; if not against his representative."

In this case the assessment for back taxes was made by the regular assessor, but not until December 31, 1898, under the above quoted provision in section 3179. It was, however, a special assessment, made after the regular assessment in the assessor's books of 1898, and after such books had been transmitted within the time prescribed by law, (sec. 3180) December 1, 1898, to the auditor, subject to the inspection of the public. In regard to the regular assessment the Statutes of Kentucky provide

(section 3181) for a board of equalization, which sits on the first Monday of January, and continues in session not longer than four weeks. The auditor must deliver to the board the assessment books filed with him by the assessor, and it is to hear all complaints against the assessments made by the assessor, and may determine the same, but it cannot increase the assessment without notice to the party whose property is to be increased. The section is part of the general statutes as to assessments for the annual taxes, and it refers evidently to the assessments made by the assessor up to the first of December preceding, and which appear in the book which the law directs to be sent to the auditor and by him transmitted to the board of equalization. It does not refer to an extraordinary assessment made by the assessor for back taxes subsequently to the time provided for by law for the making of the general assessment. The assessor must return the general assessment which he makes in his book under section 3179 to the auditor on or before December 1 in each year. (Section 3180.) This book remains in the auditor's office subject to the inspection of the public until transmitted, in the January following, to the board of equalization, under section 3181. In the case before us the assessment for the back tax was made December 31, 1898, by entering a separate assessment for each year in the assessor's book for that year, and therefore these various assessments were not contained in the books of the assessor, as they were sent to the auditor on December 1 of each year respectively. The assessor's books for the years prior to 1898 were obtained in some way, and the entries of the assessments were therein made, because, as stated, there were no other books provided. We find no provision of the statute as to assessments for back taxes which requires notice of such assessment if made at any time other than in the regular course for the general assessment as provided for in the general statute. If the assessment happens to be made in the assessor's book prior to December 1 in any year it, of course, goes with the book to the auditor, and remains there for inspection by the public until taken before the board of equalization. Such an assessment would carry with it the provision of the law of the State applicable to the city on the subject of assessments, including the general notice under the law providing for such assessment. But that, of course, cannot apply where the assessment is not made on or before December 1, in the regular assessment book. That book the taxpayer must omit to examine at his peril, when filed with the auditor, or when before the board of equalization. As sent to the auditor, December 1, 1898, the book did not contain the assessment in question. And as to the books of the former years, they had passed out of the legal custody of the assessor, and he could not take any of such books and, without notice, impose a conclusive assessment for back taxes for the particular year the book had been made use of as an assessment book. Such assessment could not be enforced unless the

taxpayer could thereafter at some time, and as a matter of right, be heard upon the question of the validity and the amount of such tax. The general statutory notice as to the regular assessment proceedings cannot be regarded as notice of this special assessment made years after the completion of the old assessments.

In regard to the question of notice, the Court of Appeals held that the burden of proof in such a proceeding as this was upon the plaintiff to establish that there was no notice of the assessment given it; but it also held that the defendant had, in fact, proved that there was notice given to the plaintiff in error before the assessment was made. This applies to a notice in fact, but the Court of Appeals did not hold that there was any notice made necessary by the statute in regard to such a special assessment as above described. An assessment made on December 31, 1898, in the manner set forth, although imposed before the meeting of the board of equalization in January following, was not imposed at a time which made the general statutes as to assessments applicable, and therefore the taxpayer had no statutory notice or opportunity furnished him to appear and be heard before the board. He may have examined the assessor's books for the various years 1894–1898, when filed in the auditor's office on the first of December, by the assessor, and prior to December 31, when this assessment was made, and found that there was no assessment made against him for any back taxes. There was no statutory obligation imposed on him to again examine the books lest perchance they may have had an inter lined assessment made in them, for the making of which the law provided no notice. It follows that the subsequent assessments placed in such books and not appearing on any book when sent to the auditor by the assessor, would not be made under any statutory provision for notice, and would not afford the taxpayer an opportunity to be heard before the board of equalization in regard to the illegality of such tax.

If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is, whether any notice is provided for by the statute. (*Stuart* v. *Palmer*, 74 N. Y. 183.) Before this special assessment could be actually enforced or during the process of enforcement the taxpayer must have an opportunity to be heard as to its validity and extent. In *Wayerhauser* v. *Minnesota*, (176 U. S. 550,) it was held that the taxpayer was entitled to an opportunity to be heard before the tax could be enforced (see page 556;) that the filing of the tax list therein spoken of was, in effect, as held by the court, the institution of an action against each tract of land described in it, and the taxpayer thereafter had opportunity to make any defense he might have. This the court held was sufficient. The proceedings

leading up to that assessment originated in a complaint, in writing, to the governor, who thereupon appointed a commission to hear the matter, and if proper, impose the tax, but before it could be enforced or during the process of collection the landowner had a right to be heard. The statute now before us does not provide for a notice of the special assessment, nor did the plaintiff have an opportunity to be heard as to the assessment before the board of equalization.

But in this case the State court has afforded to the taxpayer full opportunity to be heard on the question of the validity and amount of the tax, and after such opportunity has rendered a judgment which provides for the enforcement of the tax as it has been reduced by the court, the reduction amounting to over five thousand dollars. The plaintiff has, therefore, been heard and on the hearing has succeeded in reducing the assessment. What more ought to be given? Whether the opportunity to be heard which has been afforded to the plaintiff has been pursuant to the provisions of some statute, as in *McMillan* v. *Anderson*, (95 U. S. 37,) and *Hagar* v. *Reclamation District*, (111 U. S. 701,) or by the holding of the court that the plaintiff has such right in the trial of a suit to enjoin the collection of the tax, is not material. The State court in this case has held the taxpayer entitled to a hearing and has granted and enforced such right, and upon the trial has reduced the tax. In so doing the court below has not assumed the legislative function of making an assessment. It has merely reduced, after a full hearing, the amount of an assessment made by the assessor under color at least of legislative authority.

The Court of Appeals has held that the power of the trial court in giving the hearing has been properly exercised.

It is urged that the court below has not in fact decided that the assessment against plaintiff as reduced was legal, but only that plaintiff will not be heard upon the question of enjoining the collection of the tax until plaintiff tenders the amount of tax equitably due. The plaintiff denies that there is any amount equitably due, and it contends that it has not had an opportunity to show the invalidity of the assessment. We think the contention not well founded. The court has held that the burden rested upon the plaintiff to show the invalidity of the tax. Even if erroneous this decision is not one of a Federal nature. It had the chance, at all events, to show the invalidity of the tax in whole or in part. Upon the evidence given on the trial the tax was reduced, and the Court of Appeals has said:

"The claim of appellant to escape a retrospective assessment of the property of its *cestui que trust* in this case is wholly technical. That it owes the tax it seeks to evade is made apparent by an examination of this record. Although it had in its hands the means of instantly and most conclusively showing either that the trust estate did not own the property with which it was assessed, or that the values were too high, it

introduced no evidence whatever on this subject. While it was not incumbent on the appellees to introduce any evidence, being authorized under the principles herein enunciated to await the evidence of appellant showing the invalidity of the assessment complained of, yet they did introduce evidence which we think clearly establishes that appellant justly owes the amount of the tax which has been adjudged against the estate of its *cestui que trust.*"

We think it sufficiently appears that the plaintiff had an opportunity to be heard upon the question of the validity of the tax, both for want of notice in fact, and whether the property assessed for back taxes had really been omitted from the original list for the years in question, and was therefore properly taxable under the assessment for back taxes. Even if the assessment had been made by the assessor without notice, yet if upon the hearing in this cause the plaintiff had the right and an opportunity to be heard, and the assessment was thereon reduced, it has obtained all the hearing it was entitled to. We think the plaintiff did have such a hearing, and the judgment is correct, so far at least as this court is authorized to review it. It is therefore

Affirmed.

True copy.

Test:

Clerk Supreme Court U. S.